

No. 12379

United States
Court of Appeals
For the Ninth Circuit.

ESTATE OF EDWIN F. GILLETTE, Harriette
O'Neil Gillette, Executrix,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

DEC 22 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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DOCKET NO. 15623

HARRIETTE O'NEIL GILLETTE, Executrix,
of The Estate of EDWIN F. GILLETTE,

Amended Caption:

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
(See Order of 10/20/47)

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Petitioner:

E. H. McDERMOTT, ESQ.,
WM. M. EMERY, ESQ.,
L. S. SCHMITZ, ESQ.,
J. S. PENNELL, ESQ.,
DANIEL A. TAYLOR, ESQ.

For Respondent:

HAROLD H. HART, ESQ.

DOCKET ENTRIES

1947

Apr. 28—Petition received and filed. Taxpayer
notified. Fee paid.

1947

Sept. 2—Copy of petition served on General Counsel.

Aug. 28—Request for Circuit hearing in Chicago, Ill., filed by taxpayer. 9/12-47 Granted.

Oct. 15—Motion to amend caption filed by taxpayer.

Oct. 20—Order amending caption to read, Estate of Edwin F. Gillette, Harriette O'Neil Gillette, Executrix, Petitioner, entered.

Oct. 30—Answer filed by General Counsel.

Nov. 5—Copy of answer served on taxpayer—Chicago, Illinois.

1948

Apr. 14—Hearing set June 7, 1948 in Chicago, Illinois.

June 10

& 11 Hearing had before Judge Disney on merits. Appearance of Daniel A. Taylor; Subpoena and application of Delphine G. Jenks and Stipulation of facts with exhibits 1 to 4 inclusive filed at hearing. Briefs due 8/10/48. Reply briefs due 9/5/48.

June 29—Transcript of hearing June 10 & 11, 1948 filed.

Aug. 6—Motion for extension to 8/23/48 to file brief, filed by General Counsel. 8/9/48 Granted.

1948

Aug. 9—Brief filed by taxpayer. Copy served.

Aug. 23—Brief filed by General Counsel. Copy served.

Aug. 30—Motion for extension to 9/27/48 to file reply brief, filed by taxpayer. 8/31/48 Granted.

Sept. 27—Motion for extension to 10/7/48 to file reply brief, filed by taxpayer. 9/28/48 Granted.

Oct. 8—Reply brief filed by taxpayer. Copy served.

1949

Jan. 25—Memorandum findings of fact and opinion rendered. Judge Disney. Decision will be entered under Rule 50. Copy served.

Jan. 25—Order amending caption of memorandum findings of fact and opinion, entered.

Feb. 10—Order correcting and modifying findings of fact and opinion, entered.

Apr. 6—Respondent's computation filed.

Apr. 8—Hearing set April 27, 1949 on settlement.

Apr. 26—Consent to settlement filed by taxpayer.

Apr. 27—Decision entered. Judge Disney. Div. 4.

July 22—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by taxpayer.

1949

July 22—Affidavit of service by mail of petition for review filed by taxpayer.

Aug. 22—Motion for extension to 10/20/49 to prepare and transmit record filed by taxpayer.

Aug. 22—Order enlarging time to October 20, 1949 to prepare and transmit record entered.

Sept. 16—Statement of points with proof of service thereon filed by taxpayer.

Sept. 21—Designation of record with proof of service thereon filed by taxpayer.

Sept. 21—Narrative statement of evidence filed. Agreed to.

The Tax Court of The United States

Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of

deficiency dated June 20, 1947 and as a basis of this proceeding alleges as follows:

1. Harriette O'Neil Gillette is an individual residing at 233 South San Marino Avenue, Pasadena, California, and is the duly qualified and acting executrix of the Estate of Edwin F. Gillette, Deceased, whose residence at the time of his death was at Pasadena, California. The estate tax return for the estate of said decedent was duly filed with the Collector of Internal Revenue for the Sixth District of California, Los Angeles, California.

2. The notice of deficiency (a copy of which is attached hereto and marked "Exhibit A") was mailed to petitioner on June 20, 1947.

3. The taxes in controversy are estate taxes upon the estate of said decedent who died December 10, 1943. Respondent determined a deficiency in the amount of \$40,653.10.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Respondent erred in including in the gross estate of said decedent certain real property located at the southwest corner of Dearborn and Madison Streets, Chicago, Illinois, transferred into trust by decedent on September 17, 1938.

(b) Respondent erred in including in the gross estate of decedent certain real property located at Lake Beulah, Wisconsin, transferred by decedent on September 17, 1938.

(c) The respondent erred in failing to deduct from the gross estate certain administration expenses including attorneys' fees and expenses, including those incurred or to be incurred in connection with this proceeding.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) On or about September 17, 1938, more than five years prior to his death, the decedent, Edwin F. Gillette, conveyed his one-half interest in certain real estate known as the Hartford Building and located at the southwest corner of Dearborn and Madison Streets, Chicago, Illinois, to his son, Hyde Gillette, as trustee for decedent's four children. Respondent has included such interest in decedent's gross estate as a transfer in contemplation of death. Such transfer was not made to bar possible statutory rights of petitioner, as decedent's intended future wife, in decedent's estate, as asserted by respondent, but was made in consideration of the assumption by the trust of a substantial debt owing by decedent and for other motives associated with life. Such transfer was not made in contemplation of death and is not properly includible in decedent's gross estate.

(b) On or about September 17, 1938, more than five years prior to his death, decedent conveyed his one-half interest in a summer home at Lake Beulah, Wisconsin to his four children. Respondent has

included such interest in decedent's gross estate as a transfer in contemplation of death. Such transfer was not made to bar possible statutory rights of petitioner, as decedent's intended future wife, in decedent's estate, as asserted by respondent, but was made to relieve decedent from the burden and expense of maintaining said property and for other motives associated with life. Such transfer was not made in contemplation of death and is not properly includible in decedent's gross estate.

(c) Since receiving notice of respondent's proposed determination, which was subsequently followed in the notice of deficiency, petitioner has incurred expenses and attorneys' fees and will hereafter incur additional expenses and fees in connection with the determination of estate tax liability. Such expenses and fees are in addition to amounts allowed in the notice of deficiency. The amount of such expenses and fees will be ascertained at or before the conclusion of this proceeding, and such amount is properly deductible from the gross estate.

6. Petitioner has made payment on account of the estate tax liability involved herein to the aforesaid Collector of Internal Revenue in the sum of \$45,064.39 on March 3, 1945 coincident with the filing of the estate tax return and within three years prior to the mailing of the said notice of deficiency and the filing of this Petition.

Wherefore, petitioner prays that this court may hear this proceeding and redetermine petitioner's

correct tax liability and the dates and amounts of any overpayments thereof.

/s/ E. H. McDERMOTT,

/s/ WM. M. EMERY,

/s/ L. S. SCHMITZ,

/s/ J. S. PENNELL,

Counsel for Petitioner.

State of California,

County of Los Angeles—ss.

Harriette O'Neil Gillette, being duly sworn, says that she is the petitioner above named; that she has read the foregoing Petition or had the same read to her, and is familiar with the statements contained therein; and that the statements contained therein are true to the best of her knowledge and belief.

/s/ HARRIETTE O'NEIL GILLETTE,

Subscribed and sworn to before me this 20 day of August 1947.

[Seal]

/s/ LOIS E. VAN NAME,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires March 28, 1950.

EXHIBIT A

Treasury Department
Internal Revenue Service

Office of Internal Revenue Agent in Charge Chi-
cago Division 105 W. Adams St.

Chicago, Illinois

June 20, 1947.

Mrs. Harriette O'Neil Gillette, Executrix of the
Estate of Edwin F. Gillette,
233 South San Marino Avenue,
Pasadena 8, California.

Dear Mrs. Gillette:

You are advised that the determination of the estate tax liability of the above-named estate discloses a deficiency in tax of \$40,653.10, as shown in the statement attached hereto.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Chicago, Illinois, for the attention of Estate Tax

Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

JOSEPH D. NUNAN, JR.

Commissioner,

By O. W. OLSON

Acting Internal Revenue

Agent in Charge.

Enclosures:

Statement

Form of waiver

Form 1276.

mc—T.DB.

Estate of Edwin F. Gillette

6th California
(Transferred to
1st Illinois)

Statement

Harriette O'Neil Gillette, Executrix
of the Estate of Edwin F. Gillette,
233 South San Marino Avenue,
Pasadena 8, California.

	Liability	Assessed	Deficiency
Estate tax	\$85,717.49	\$45,064.39	\$40,653.10

The following statement shows the final determination of this office in connection with the preliminary notice (30 day letter) issued February 18, 1947, by the California division, and after hearing on protest:

Adjustments to net estate

Net estate for basic tax as disclosed by return.....\$149,146.34

Additions to value of gross estate and
decreases in deductions:

Real estate	\$	1,610.00	
Transfers		132,621.05	
Miscellaneous administration expenses		500.00	134,731.05
			<hr/>
			\$283,877.39

Reductions in value of gross estate and
increases in deductions:

Attorneys' fees		232.07
-----------------------	--	--------

Net estate for basic tax as adjusted.....\$283,645.32

Net estate for additional tax as adjusted.....\$323,645.32

Explanation of adjustments:

Real Estate	Returned	Determined
Item 1	\$ 13,390.00	\$ 15,000.00

The determined value of the above item is based upon the fair market value thereof at date of decedent's death, as obtained from sources considered by this office to be reliable.

Transfers	Returned	Determined
Item 7	\$ 1,976.00	\$ 2,000.00
Item 8	7,904.00	8,000.00
Item 11	4,112.50	4,137.50
Item 16	7,050.00	7,000.00
Item 17	5,081.25	5,087.50
Item 21	5,575.00	5,600.00
Item 24	4,875.00	5,000.00
Item 26	14,625.00	14,375.00
Item 27	7,600.00	7,562.50
Item 27(a)	264.02	2,300.00

New—not returned:

Transfer in trust of real estate of southwest corner of Dearborn and Madison Streets, Chicago, Illinois, under date of September 17, 1938.....	0.00	120,621.32
Transfer by warranty deed of real estate in Lake Beulah, Wisconsin, on September 17, 1938	0.00	10,000.00

The determined values of items 7 and 8 are based upon redemption values at date of decedent's death; of item 27(a) upon the fair market value at date of death, as obtained from sources considered by this office to be reliable; of all other of above items, except new items, not returned, upon the mean of high and low sales as of date of death upon the principal stock exchange on which said items are traded, or upon the mean of bid and asked prices in over the counter trading.

It is determined that the transfer, in trust dated September 17, 1938, of the real estate located at the southwest corner Dearborn and Madison Streets, Chicago, Illinois, and the transfer by warranty deed on September 17, 1938, of real estate located at Lake Beulah, Wisconsin, are properly includible in the decedent's gross estate as transfers in contemplation of death under Section 811(c) of the Internal Revenue Code. Said transfers are considered to have been made to bar possible statutory rights of decedent's intended future wife in his estate at the time of his death.

The values of the above-mentioned items of real estate are based upon the fair market value thereof at date of decedent's death as obtained from sources considered by this office to be reliable.

	Returned	Determined
Attorneys' fees	\$ 3,500.00	\$ 3,732.07

Determined in the amount incurred and paid.

	Returned	Determined
Miscellaneous administration expenses		
Item 1	\$ 575.00	\$ 75.00

Determined in the amount incurred and paid.

Computation of Tax

	Returned	Determined
Gross estate for basic tax	\$254,882.86	\$389,113.91
Deductions	105,736.52	105,468.59
Net estate for basic tax.....	\$149,146.34	\$283,645.32
Net estate for additional tax..	\$189,146.34	\$323,645.32
1. Gross basic tax	\$ 7,845.81	
2. Credit for estate and inheritance tax	2,863.15	
3. Gross basic tax, less credit.....	\$ 4,982.66	
4. Credit for gift tax	685.86	

5. Net basic tax	\$ 4,296.80
6. Total gross taxes (basic and additional)	\$ 89,266.50
7. Gross basic tax	7,845.81
8. Gross additional tax	\$ 81,420.69
9. Credit for gift tax	0.00
10. Net additional tax	81,420.69
11. Total tax payable	\$ 85,717.49
Tax assessed per return	45,064.39
Deficiency	\$ 40,653.10

The deficiency bears interest at the rate of 6 per cent per annum from 15 months after the decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

Filed T.C. U.S., Aug. 28, 1947.

[Title of Tax Court and Cause.]

MOTION TO AMEND CAPTION

Harriette O'Neil Gillette, executrix of the Estate of Edwin F. Gillette, by her counsel, hereby respectfully requests leave to amend, on the face thereof, the petition filed in the above entitled cause, in order to conform said petition to the rules of this court, by striking from the caption of said petition the words "Harriette O'Neil Gillette, Executrix of the Estate of Edwin F. Gillette", and inserting in lieu thereof the words "Estate of Edwin F. Gillette, Harriette O'Neil Gillette, Executrix".

/s/ J. S. PENNELL,

Counsel for Petitioner.

Received and Filed T. C. U. S. Oct. 15, 1947.

[Title of Tax Court and Cause.]

ORDER

On motion of counsel for the petitioner, it is

Ordered, that the caption of the proceeding at the above docket number is amended to read Estate of Edwin F. Gillette, Harriette O'Neil Gillette, Executrix, Petitioner, v. Commissioner of Internal Revenue, Respondent.

[Seal] /s/ BOLTON B. TURNER, km
Judge.

Dated: Washington, D. C., October 20, 1947.
cgh

Served Oct. 22, 1947.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4. (a), (b) and (c). Denies that the Commissioner erred as alleged in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5. (a) Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition, except it is admitted that the decedent, Edwin F. Gillette, on September 17, 1938, transferred in trust certain real estate located at the southwest corner of Dearborn and Madison Streets, Chicago, Illinois, to his son, Hyde Gillette, as trustee, and that respondent has determined said transfer was made in contemplation of death under Section 811 (c) of the Internal Revenue Code.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition, except it is admitted that on or about September 17, 1938, the decedent transferred by warranty deed certain real estate located at Lake Beulah, Wisconsin, to his children, and that respondent has determined said transfer was made in contemplation of death

under Section 811 (c) of the Internal Revenue Code.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

6. Denies the allegations contained in paragraph 6 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

Wherefore, respondent prays that the Court re-determine the deficiency herein to be the amount determined by the Commissioner, vis.: estate tax in the amount of \$40,653.10.

/s/ CHARLES OLIPHANT, GWB
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

JOHN D. KILEY,
Division Counsel.
HAROLD H. HART,
Special Attorney, Bureau of
Internal Revenue.

Received and Filed T. C. U. S. Oct. 30, 1947.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel of record that the following facts may be taken as true and correct and may be found by the Court, without prejudice, however, to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated, and subject to the right of either party to object to the relevancy and materiality of any fact herein stipulated.

1. The petitioner's decedent, Edwin F. Gillette, was born on October 19, 1863, and died on December 10, 1943, a resident of Pasadena, California, leaving him surviving his widow, Harriette O'Neil Gillette; two sons, Hyde and Edwin and two daughters, Helen and Marietta.

2. The estate of Edwin F. Gillette, petitioner herein, was administered in the Superior Court of the State of California in and for the County of Los Angeles.

3. On September 17, 1938, the decedent owned an undivided one-half interest in certain real estate, known as the Hartford Building, located at the southwest corner of Dearborn and Madison Streets, Chicago, Illinois. The other undivided one-half interest was owned by the decedent's sister, Mrs. William S. Jenks. On said date the decedent conveyed his undivided one-half interest to his son,

Hyde Gillette, as Trustee for decedent's four children. A copy of the Trust Deed of Conveyance is attached hereto marked "Exhibit 1" and made a part hereof.

4. On September 17, 1938, the decedent owned an undivided one-half interest in certain real estate, known as the Lake Beulah property, located at Lake Beulah, Wisconsin. The other undivided one-half interest was owned by decedent's sister, Mrs. William S. Jenks. By Warranty Deed dated September 17, 1938, the decedent conveyed his undivided one-half interest in said property to his four children.

5. On September 17, 1938, the decedent owned an undivided one-half interest in certain real estate, known as the Michigan Avenue property, located on South Michigan Avenue, Chicago, Illinois. The other undivided one-half interest was owned by decedent's sister, Mrs. William S. Jenks. On said date the decedent conveyed his undivided one-half interest to his son, Hyde Gillette, as Trustee. A copy of the Trust Deed and amendments thereto are attached hereto, marked "Exhibit 2".

6. The decedent then contemplating inter-marriage with one Harriette Marie O'Neil entered into an antenuptial agreement on September 19, 1938, a copy of which is attached hereto, marked "Exhibit 3" and made a part hereof.

7. The decedent executed a Last Will and Testament on April 24, 1939, a copy of which is attached hereto, marked "Exhibit 4" and made a part hereof.

8. The petitioner filed the decedent's estate tax return on or about March 3, 1945, showing a total estate tax payable of \$45,064.39, which was paid as follows:

9/27/44.....	\$12,158.49
3/10/45.....	32,905.90

Said return did not include as a part of the decedent's gross estate the ownership of any interest in the two tracts of real estate described above, respectively, as the Hartford Building and the Lake Beulah, Wisconsin, property. In his notice of deficiency herein the respondent has included in the value of the petitioner's gross estate the value of said real estate under Section 811 (c) of the Internal Revenue Code.

9. Any additional deductible administration expense, including attorney fees, incurred and paid by the petitioner in the administration of the estate here involved may be determined under Rule 50 of the Court's Rules of Practice.

/s/ DANIEL A. TAYLOR,
Counsel for Petitioner.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel
for Respondent.

EXHIBIT 1

This Indenture made this 17th day of September, A.D. 1938, by and between Edwin F. Gillette, a widower, of Pasadena, California, (hereinafter called the "Settlor"), and Hyde Gillette, of Chicago, Illinois, (hereinafter called the "Trustee"), Witnesseth:

That the Settlor in consideration of the Trustee's assumption of and agreement to pay, but only out of the assets of the trust estate, the indebtedness of the Settlor to his sister, Mrs. William S. Jenks, as evidenced by his certain promissory notes, all as set out in Article V hereof, and for One Dollar (\$1.00) and other good and valuable consideration, does hereby alien, release, remise and convey unto said Trustee an undivided one-half of the following described premises, situated in the City of Chicago, County of Cook and State of Illinois, to-wit:

Lot One (1) of the County Clerk's Division of Block 119 of School Section Addition to Chicago, and being also known as the Southwest (SW) corner of Dearborn and Madison Streets in said City of Chicago;

To Have And To Hold upon the trusts and for the uses and purposes as follows:

Article I. Concerning The Trustee.

(a) The Trustee hereunder shall have full power and authority to sell, transfer, assign and convey all or any part of the property which shall at any

Exhibit 1—(Continued.)

time form a part of the trust estate at such time or times and upon such terms and conditions (either for cash or upon credit) as to the Trustee shall seem best, and to make, execute and deliver all deeds of conveyance and other instruments in writing as may be in the opinion of the Trustee necessary or proper for the best management of the trust estate; to enter into leases, either in praesenti or in futuro, of any real estate which shall form a part of the trust estate at any time, for such rent and for such length of time, not exceeding two hundred (200) years, as the Trustee thinks best.

(b) The Trustee shall also have the power to erect buildings, to change, alter, tear down or make additions to any existing building upon any real estate forming part of the trust estate, to keep the estate insured and to adjust all matters in connection therewith; to retain any investments in real or personal property which shall come into his possession as Trustee hereunder, for such time as he shall deem it for the best interests of the trust so to do, and also to invest and reinvest from time to time any funds coming into his hands as Trustee as aforesaid, and not paid out under the provisions hereof, in such real or personal property, including stocks of corporations, as shall commend themselves to the business judgment of the Trustee without being limited by any statute covering trustee investments; to borrow money from any person or corporation, including the Trustee in his individual

Exhibit 1—(Continued.)

capacity; to pledge, mortgage or otherwise incumber any part of the trust estate for the purpose of securing the money so borrowed; to vote any corporate stock, either in person or by proxy, for any purpose whatsoever, and to consent to any reorganization, consolidation, merger or readjustment of the financial structure or sale of the assets of any corporation, trust or other organization, the securities of which may constitute a portion of the trust estate; to take any action with reference to such securities which in the opinion of the Trustee may be necessary in order to obtain the benefit of any such reorganization, consolidation, merger, readjustment or sale; to exercise any conversion privilege or subscription right given to the Trustee as the owner of any securities forming a part of the trust estate, and to accept and hold as part of the trust estate any securities resulting from any such reorganization, consolidation, merger, readjustment, sale or conversion or subscription; to cause any securities or other property which may at any time form a part of the trust estate to be issued, held or registered in the individual name of the Trustee, or in the name of his nominee, or in such form that title could pass by delivery; to retain undivided interests in real estate, and to invest in undivided interests in real estate, and to maintain, operate, lease and otherwise deal with and dispose of such property jointly with the other owners thereof, and particularly to enter into joint covenants with

Exhibit 1—(Continued.)

respect to the leasing thereof; to join with others in the formation of corporations incorporated under the laws of the State of Illinois or elsewhere, and in connection therewith to contribute such part or all of the trust property as the Trustee may deem advisable to such corporation in return for the shares thereof, such property to be turned in at such value as the Trustee in his unfettered discretion may determine, and to do all other acts in relation to the trust estate, or in relation to the disposition or investment thereof, which in the judgment of the Trustee shall be needful or desirable to the proper and advantageous management of the trust estate so as to protect the same and make the same productive, it being the intention hereof that said Trustee shall have authority to do all things in regard to the trust estate in the same manner and to the same extent as if said Trustee individually were the sole owner thereof.

(c) The Trustee shall be the absolute representative of all persons who may be or become at any time beneficiaries under any of the provisions contained in this agreement, and it shall not be necessary in any suit or legal proceeding of any kind, nature or description whatsoever, which may at any time be brought either against the Trustee hereunder or in his behalf as such Trustee to make party or parties thereto any of said beneficiaries.

(d) No person purchasing any portion of the trust property from the Trustee or lending money

Exhibit 1—(Continued.)

to the Trustee shall be under any obligation to see to the application of the money paid by them to said Trustee.

(e) No person dealing with the Trustee in any manner shall be under any obligation to inquire into the validity, expediency or propriety of any act of the Trustee or into any of the provisions of this agreement.

(f) The Trustee shall be reimbursed out of said trust estate for all reasonable expenses incurred in the management and protection thereof, and the Trustee may be paid a fair and just compensation out of the trust estate for services hereunder if he or it desires compensation for such services.

(g) The Trustee shall also have full power to pledge, mortgage or otherwise encumber any part of the trust estate for the purpose of raising money to remove liens which may be imposed thereon to enforce payment of any Federal or State taxes.

Article II. Payment Of Income.

(a) During the continuance of this trust the said Trustee shall pay the net income from said trust estate in equal shares to Hyde Gillette, Edwin Gillette, Helen Gillette, and Marietta Gillette Will, children of the Settlor, for and during the term of their respective natural lives. From and after the death of any of said children, the income which

Exhibit 1—(Continued.)

would have been payable to him or her had he or she continued to live, shall be payable to such of the lawful descendants of the Settlor and in such shares and proportions and subject to such terms, trusts and conditions as such child in and by his or her last will and testament may appoint and direct; provided that if such deceased child shall leave a spouse living, such child may by his or her will appoint and direct, if such child shall so desire, that any part or all of the income which would have been payable to him or her had he or she continued to live shall be paid to such spouse so long as he or she shall live, or for any shorter period.

(b) In so far as the aforesaid power of appointment of income conferred upon said children shall be void, shall not extend or take effect, or be not exercised, the income which would have been payable to such child had he or she continued to live shall be paid per stirpes to the issue surviving from time to time of such deceased child. If at the time when any payment of income is to be made by said Trustee there shall be surviving no issue of such deceased child, then the income which would have been payable to such deceased child if he or she had continued to live, shall be paid in equal shares to the then surviving children of the Settlor named in Article II, provided, however, that the then surviving issue of any deceased child shall be paid per

Exhibit 1—(Continued.)

stirpes the share of such income which the deceased child would have been paid if living.

(c) All income payments hereunder shall be made in quarterly installments or oftener if convenient.

(d) During the minority or other legal disability of any beneficiary to whom payments of income are herein directed to be made, the Trustee may make such payments in any one or more of the following ways: (1) Directly to said beneficiary; (2) to the legal guardian or conservator of said beneficiary; (3) to any relative of said beneficiary to be expended by such relative for the education and maintenance of such beneficiary; or (4) by him expending the same for the education and maintenance of said beneficiary. The Trustee shall not be required to see to the application of any such payment so made to any of said persons, but his or their receipts therefor shall be a full discharge for the Trustee.

(e) Upon the death of any beneficiary, any accrued, accumulated or undistributed net income which would have been payable to such beneficiary had such beneficiary continued to live, shall be paid to the beneficiary who shall next be entitled upon the death of such deceased beneficiary to receive such income or the principal from which such income was derived.

. Exhibit 1—(Continued.)

Article III. Termination of Trust and Distribution
of the Trust Estate.

(a) Unless terminated as provided in paragraph (b) of this Article III, the trust hereby created shall terminate in any and the latest event, any provision hereof to the contrary notwithstanding, upon the death of the last survivor of the following named persons, Mrs. William S. Jenks, Hyde Gillette, Edwin Gillette, Helen Gillette, and Marietta Gillette Will.

(b) Notwithstanding any of the provisions hereof, this trust may at any time after the death of Mrs. William S. Jenks be terminated by an instrument in writing signed by a majority of the children of the Settlor named in Article II then living and delivered to the Trustee, the trust actually to terminate on the date fixed in such notice for such termination.

(c) Upon the death of any child of the Settlor named in Article II prior to the termination of this trust, the portion of the trust estate held for such deceased child shall belong to but nevertheless be held by the Trustee in trust for the benefit of, such of the lawful descendants of the Settlor, and in such shares and proportions, and subject to such terms, trusts and conditions as such child in and by his or her last will and testament may direct.

(d) In so far as the aforesaid power of appointment conferred upon said children shall be void, shall not extend or take effect, or be not

Exhibit 1—(Continued.)

exercised, the portion of the trust estate held for such deceased child shall belong to but nevertheless be held by the Trustee in trust for the benefit of the then living lawful issue of such child equally per stirpes. If such deceased child of the Settlor shall leave him or her surviving no lawful issue, then upon the death of such deceased child the portion of the trust estate held for such child shall be added to, and become a part of, the trust estate held for the then surviving children of the Settlor named in Article II, and the then living issue per stirpes of any of the said children of the Settlor who may have died prior thereto.

(e) If, under any provisions of this Article III, any portion of the principal of the trust estate shall become payable to any beneficiary who shall not have attained the age of twenty-one (21) years, then notwithstanding such provisions, the Trustee shall retain such portion in trust for the benefit of such beneficiary and (subject to the provisions of paragraph (d) of Article II) shall pay to him or her so much of the net income of such portion as the Trustee, in his absolute discretion, shall consider reasonably necessary to provide for the comfort, support, maintenance, education and welfare of such beneficiary, and shall accumulate the remainder of such net income, if any, until such beneficiary shall attain the age of twenty-one (21) years, whereupon, the Trustee shall distribute to such beneficiary his or her portion of the principal

Exhibit 1—(Continued.)

of the trust estate in the hands of the Trustee, plus all accumulated income thereon.

(f) Upon the termination of this trust pursuant to either paragraph (a) or paragraph (b) of this Article III, the Trustee shall distribute the principal of said trust estate, including all accumulated income, if any, and all additions to said trust estate as follows:

(1) If all of the children of the Settlor named in Article II are then living, the Trustee shall pay over said estate in equal shares to said children.

(2) If any of said children of the Settlor shall have died prior to the termination of the trust without having exercised the power of appointment given to him or her under this trust and leave lawful issue who are living at the date of such termination, such issue shall be entitled to receive in equal shares per stirpes the share of the trust estate which such deceased child would have received if living.

(3) If any of said children of the Settlor shall have died prior to the termination of the trust and shall have exercised the power of appointment given to him or her under this trust, then the Trustee shall pay over the part of said trust estate subject to such appointment to those persons entitled thereto pursuant to such exercise.

(4) If any of said children of the Settlor shall

Exhibit 1—(Continued.)

have died prior to the termination of the trust without leaving issue surviving at the date of such termination and without having exercised the power of appointment given to him or her under this trust, then the share of said trust estate which such deceased child would have received if living shall be distributed by the Trustee in equal shares to the children of the Settlor named in Article II then living, provided, however, that the then surviving issue of any deceased child shall take per stirpes, the share which such deceased child would have taken if living.

Article IV. General.

(a) Payments to all the beneficiaries hereunder, excepting minors and persons under disability, shall be made only to such beneficiaries in person or upon their personal receipt, and no interest of any beneficiary in the income or principal of the trust estate shall be assignable in anticipation of payment, either by voluntary or involuntary acts of such beneficiary or by operation of law, or be liable in any way for such beneficiary's debts, including alimony.

(b) Any of the provisions of this trust may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by a majority of the children of the Settlor named in Article II then living and delivered to the Trustee; provided, however, that

Exhibit 1—(Continued.)

after the death of any of said children the trust may not be altered, changed or modified in any manner which materially affects the rights of those who take in substitution of any deceased child.

(c) Any Trustee at any time acting hereunder may resign by giving written notice of such resignation to the primary beneficiaries hereunder.

(d) The said Hyde Gillette shall have the right, in the event he resigns as Trustee hereunder, to appoint as Successor Trustee any person or corporation he may select to act as Successor Trustee; provided a majority of the beneficiaries hereunder approve of such selection in writing. In the event of the death, resignation, refusal or inability to act or to further act of said Hyde Gillette as Trustee hereunder without a Successor Trustee having been appointed as above provided, then Edwin Gillette shall be Successor Trustee, and he in turn, in the event of his resignation, shall have a similar right to appoint a Successor Trustee. In the event of his death, resignation, refusal or inability to act or further to act as such Trustee without a Successor Trustee having been appointed as above provided, then The Northern Trust Company, of Chicago, Illinois, shall be Successor Trustee.

(e) Each Successor Trustee acting hereunder shall have and exercise all of the powers, authorities and discretions given to the original Trustee named herein. No Trustee hereunder shall ever be liable for any act or default of his predecessor Trustee

Exhibit 1—(Continued.)

or for any loss sustained by the trust estate through any error of judgment, but only for his, her or its own wilful default.

Article V. Assumption of Certain Indebtedness
of the Settlor.

The Trustee hereby assumes and agrees to pay, but only out of the assets of the trust estate, the indebtedness of the Settlor to his sister, Mrs. William S. Jenks, as evidenced by the Settlor's two promissory notes totalling Forty Thousand Dollars (\$40,000.00) plus the accrued and unpaid interest thereon amounting to approximately \$4,000.00, and also all interest which may accrue thereon in the future.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Seal] /s/ EDWIN F. GILLETTE,

[Seal] /s/ HYDE GILLETTE,

As Trustee.

State of Illinois,
County of Cook—ss.

I, Corrine Golightly, a Notary Public in and for the said County, in the State aforesaid, Do Hereby Certify that Edwin F. Gillette, a widower, and Hyde Gillette, personally known to me to be the same persons whose names are subscribed to the

Exhibit 1—(Continued)

foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead. '

Given under my hand and notarial seal this 17th day of September, A.D. 1938.

/s/ CORINNE GOLIGHTLY,

Notary Public.

EXHIBIT 2

This Indenture made this 17th day of September, A.D. 1938, by and between Edwin F. Gillette, a widower, of Pasadena, California, (hereinafter called the "Settlor"), and Hyde Gillette, of Chicago, Illinois, (hereinafter called the "Trustee"), Witnesseth:

That the Settlor in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, does hereby alien, release, remise and convey unto said Trustee an undivided one-half of the following described premises, situated in the City of Chicago, County of Cook, and State of Illinois, to-wit:

Those parts of Lots Five (5) Six (6) Seven (7) and Eight (8) in Block Twenty (20) in Fractional Section Fifteen (15) Addition to Chicago, bounded and described as follows: Commencing at the South-

Exhibit 2—(Continued)

east corner of the North one-third of said lot Eight (8) in Block Twenty (20) aforesaid, thence North on the West line of Michigan Avenue and the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence West on a line parallel with the South line of said Lots Eight (8) and Seven (7), Two Hundred (200) feet; thence South on a line parallel with the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence East on a line parallel with the South line of said Lots Seven (7) and Eight (8) to the place of beginning, containing a piece of ground Sixty (60) feet front on Michigan Avenue by Two Hundred (200) feet more or less in depth; also known as Lot Five (5) in the Assessors Division of the North Half ($N\frac{1}{2}$) of the South Two-thirds ($S. \frac{2}{3}$) of Block Twenty (20) in Fractional Section Fifteen (15) Addition to Chicago;

To Have And To Hold upon the trusts and for the uses and purposes as follows:

Article I. Concerning the Trustee.

(a) The Trustee hereunder shall have full power and authority to sell, transfer, assign and convey all or any part of the property which shall at any time form a part of the trust estate at such time or times and upon such terms and conditions (either for cash or upon credit) as to the Trustee shall seem best, and to make, execute and deliver all deeds of conveyance and other instruments in

Exhibit 2—(Continued)

writing as may be in the opinion of the Trustee necessary or proper for the best management of the trust estate; to enter into leases, either in praesenti or in futuro, of any real estate which shall form a part of the trust estate at any time, for such rent and for such length of time, not exceeding two hundred (200) years, as the Trustee thinks best.

(b) The Trustee shall also have the power to erect buildings, to change, alter, tear down or make additions to any existing building upon any real estate forming part of the trust estate, to keep the estate insured and to adjust all matters in connection therewith; to retain any investments in real or personal property which shall come into his possession as Trustee hereunder, for such time as he shall deem it for the best interests of the trust so to do, and also to invest and reinvest from time to time any funds coming into his hands as Trustee as aforesaid, and not paid out under the provisions hereof, in such real or personal property, including stocks of corporations, as shall commend themselves to the business judgment of the Trustee without being limited by any statute covering trustee investments; to borrow money from any person or corporation, including the Trustee in his individual capacity; to pledge, mortgage or otherwise incumber any part of the trust estate for the purpose of securing the money so borrowed; to vote any corporate stock, either in

Exhibit 2—(Continued)

person or by proxy, for any purpose whatsoever, and to consent to any reorganization, consolidation, merger or readjustment of the financial structure or sale of the assets of any corporation, trust or other organization, the securities of which may constitute a portion of the trust estate; to take any action with reference to such securities which in the opinion of the Trustee may be necessary in order to obtain the benefit of any such reorganization, consolidation, merger, readjustment or sale; to exercise any conversion privilege or subscription right given to the Trustee as the owner of any securities forming a part of the trust estate, and to accept and hold as part of the trust estate any securities resulting from any such reorganization, consolidation, merger, readjustment, sale or conversion or subscription; to cause any securities or other property which may at any time form a part of the trust estate to be issued, held or registered in the individual name of the Trustee, or in the name of his nominee, or in such form that title could pass by delivery; to retain undivided interests in real estate, and to invest in undivided interests in real estate, and to maintain, operate, lease and otherwise deal with and dispose of such property jointly with the other owners thereof, and particularly to enter into joint covenants with respect to the leasing thereof; to join with others in the formation of corporations incorporated under the laws of the State of Illinois or elsewhere, and

Exhibit 2—(Continued)

in connection therewith to contribute such part or all of the trust property as the Trustee may deem advisable to such corporation in return for the shares thereof, such property to be turned in at such value as the Trustee in his unfettered discretion may determine, and to do all other acts in relation to the trust estate, or in relation to the disposition or investment thereof, which in the judgment of the Trustee shall be needful or desirable to the proper and advantageous management of the trust estate so as to protect the same and make the same productive, it being the intention hereof that said Trustee shall have authority to do all things in regard to the trust estate in the same manner and to the same extent as if said Trustee individually were the sole owner thereof.

(c) The Trustee shall be the absolute representative of all persons who may be or become at any time beneficiaries under any of the provisions contained in this agreement, and it shall not be necessary in any suit or legal proceeding of any kind, nature or description whatsoever, which may at any time be brought either against the Trustee hereunder or in his behalf as such Trustee to make party or parties thereto any of said beneficiaries.

(d) No person purchasing any portion of the trust property from the Trustee or lending money to the Trustee shall be under any obligation to see to the application of the money paid by them to said Trustee.

Exhibit 2—(Continued)

(e) No person dealing with the Trustee in any manner shall be under any obligation to inquire into the validity, expediency or propriety of any act of the Trustee or into any of the provisions of this agreement.

(f) The Trustee shall be reimbursed out of said trust estate for all reasonable expenses incurred in the management and protection thereof, and the Trustee may be paid a fair and just compensation out of the trust estate for services hereunder if her or it desires compensation for such services.

(g) The Trustee shall also have full power to pledge, mortgage or otherwise encumber any part of the trust estate for the purpose of raising money to remove liens which may be imposed thereon to enforce payment of any Federal or State taxes.

Article II. Payment of Income.

(a) During the life of the Settlor, the Trustee shall, throughout the continuance of the trust, pay the net income from the trust estate as follows:

The Settlor has conveyed in trust one-half interest in certain premises at the Southwest corner of Madison and Dearborn Streets, Chicago, Illinois, known as the Hartford Building (hereinafter called the "Hartford Building Trust"), and the Trustee of said Hartford Building Trust assumed and agreed to pay a certain indebtedness of the Settlor

Exhibit 2—(Continued)

to Mrs. William S. Jenks. There is no definite assurance that the income from said Hartford Building Trust will be sufficient to pay the interest on the indebtedness so assumed. In any year throughout the life of Mrs. William S. Jenks, when the Trustee of the Hartford Building Trust does not pay to her on account of interest on the indebtedness assumed at least \$1,000.00 then the Trustee hereunder shall pay to Mrs. William S. Jenks, out of the net income of the trust estate, the sum of \$1,000.00 or such portion thereof as, when added to such income, if any, as Mrs. Jenks does receive from the Hartford Building Trust equals the sum of \$1,000.00, and the balance of the net income, or all of the net income, as the case may be, shall be paid to the Settlor.

(b) From and after the death of the Settlor, the said Trustee shall, during the continuance of the trust, pay the net income from the trust estate as follows:

(1) To Mrs. William S. Jenks, if she survives the Settlor, such a portion thereof per year but not in excess of \$1,000.00 as may be necessary to assure an income to her of \$1,000.00 per year from either this trust or the Hartford Building Trust mentioned in paragraph (a) of this Article II.

(2) The Settlor is now a widower, but if he should marry and leave a widow him surviving who was living with him as his wife at the time

Exhibit 2—(Continued)

of his death, the Trustee shall pay to such widow for and during the term of her natural life the sum of Fifteen Hundred Dollars (\$1,500.00) per year.

(3) The Trustee shall pay all of the said net income not required to meet the payments provided for in sub-paragraphs (1) and (2) of this paragraph (b) in equal shares to Hyde Gillette, Edwin Gillette, Helen Gillette and Marietta Gillette Will, children of the Settlor for and during the term of their respective natural lives.

(4) From and after the death of Mrs. William S. Jenks, if she survives the Settlor, and the death of the widow of the Settlor, if he leaves a widow him surviving as aforesaid, or if neither Mrs. William S. Jenks nor such a widow survives the Settlor, then from and after the death of the Settlor, the Trustee shall pay all of said net income in equal shares to Hyde Gillette, Edwin Gillette, Helen Gillette and Marietta Gillette Will, children of the Settlor for and during the term of their respective natural lives.

(c) From and after the death of any of the children of the Settlor named in this Article II the income which would have been payable to him or her hereunder had he or she continued to live, shall be payable to such of the lawful descendants of the Settlor and in such shares and proportions and subject to such terms, trusts and conditions

Exhibit 2—(Continued)

as such child in and by his or her last will and testament may appoint and direct; provided that if such deceased child shall leave a spouse living, such child may by his or her will appoint and direct, if such child so desires, that any part or all of the income which would have been payable to him or her had he or she continued to live shall be paid to such spouse so long as he or she shall live or for any shorter period.

(d) In so far as the aforesaid power of appointment of income conferred upon said children shall be void, shall not extend or take effect, or be not exercised, the income which would have been payable to such child had he or she continued to live shall be paid per stirpes to the issue surviving from time to time of such deceased child. If at the time when any payment of income is to be made by said Trustee there shall be surviving no issue of such deceased child, then the income which would have been payable to such deceased child if he or she had continued to live, shall be paid in equal shares to the then surviving children of the Settlor named in Article II, provided, however, that the then surviving issue of any deceased child shall be paid per stirpes the share of such income which the deceased child would have been paid if living.

(e) All income payments hereunder shall be made in quarterly installments or oftener if convenient.

Exhibit 2—(Continued)

(f) During the minority or other legal disability of any beneficiary to whom payments of income are herein directed to be made, the Trustee may make such payments in any one or more of the following ways: (1) Directly to said beneficiary; (2) to the legal guardian or conservator of said beneficiary; (3) to any relative of said beneficiary to be expended by such relative for the education and maintenance of such beneficiary; or (4) by him expending the same for the education and maintenance of said beneficiary. The Trustee shall not be required to see to the application of any such payment so made to any of said persons, but his or their receipts therefor shall be a full discharge for the Trustee.

(g) Upon the death of any beneficiary, any accrued, accumulated or undistributed net income which would have been payable to such beneficiary had such beneficiary continued to live, shall be paid to the beneficiary who shall next be entitled upon the death of such deceased beneficiary to receive such income or the principal from which such income was derived.

Article III. Termination of Trusts and
Distribution of the Trust Estate.

(a) Unless terminated as provided in paragraph (b) of this Article III, the trust hereby created shall terminate in any and the latest event, any provisions hereof to the contrary notwithstanding.

Exhibit 2—(Continued)

ing, on the death of the last survivor of the following named persons: Mrs. William S. Jenks, Hyde Gillette, Edwin Gillette, Helen Gillette, Marietta Gillette Will and the widow of the Settlor, if he leaves a widow him surviving who is entitled to receive income hereunder.

(b) At any time after the death of the widow of the Settlor, if he should marry and leave a widow him surviving who is entitled to receive income hereunder, and the death of Mrs. William S. Jenks, or at any time after the death of the Settlor if neither such a widow nor Mrs. William S. Jenks survives the Settlor, this trust may be terminated, any provisions hereof to the contrary notwithstanding, by an instrument in writing signed by a majority of the children of the Settlor named in Article II then living, and delivered to the Trustee, the trust actually to terminate on the date fixed in such notice for such termination.

(c) Upon the death of any child of the Settlor named in Article II prior to the termination of this trust, the portion of the trust estate held for such deceased child shall belong to, but nevertheless be held by the Trustee in trust for the benefit of, such of the lawful descendants of the Settlor, and in such shares and proportions, and the subject to such terms, trusts and conditions as such child in and by his or her last will and testament may direct.

Exhibit 2—(Continued)

(d) In so far as the aforesaid power of appointment conferred upon said children shall be void, shall not extend or take effect, or be not exercised, the portion of the trust estate held for such deceased child shall belong to, but nevertheless be held by the Trustee in trust for the benefit of, then then living lawful issue of such child equally per stirpes. If such deceased child of the Settlor shall leave him or her surviving no lawful issue, then upon the death of such deceased child the portion of the trust estate held for such child shall be added to, and become a part of, the trust estate held for the then surviving children of the Settlor named in Article II, and then then living issue per stirpes of any of the said children of the Settlor who may have pdied prior thereto.

(e) If, under any provisions of this Article III, any portion of the principal of the trust estate shall become payable to any beneficiary who shall not have attained the age of twenty-one (21) years, then notwithstanding such provisions, the Trustee shall retain such portion in trust for the benefit of such beneficiary and (subject to the provisions of paragraph (f) of Article II) shall pay to him or her so much of the net income of such portion as the Trustee, in his absolute discretion, shall consider reasonably necessary to provide for the comfort, support, maintenance, education and welfare of such beneficiary, and shall accumulate the remainder of such net income, if any, until such

Exhibit 2—(Continued)

beneficiary shall attain the age of twenty-one (21) years, whereupon, the Trustee shall distribute to such beneficiary his or her portion of the principal of the trust estate in the hands of the Trustee, plus all accumulated income thereon.

(f) Upon the termination of this trust pursuant to either paragraph (a) or paragraph (b) of this Article III, the Trustee shall distribute the principal of said trust estate, including all accumulated income, if any, and all additions to said trust estate as follows:

(1) If all of the children of the Settlor named in Article II are then living, the Trustee shall pay over said estate in equal shares to said children.

(2) If any of said children of the Settlor shall have died prior to the termination of the trust without having exercised the power of appointment given to him or her under this trust and leave lawful issue who are living at the date of such termination, such issue shall be entitled to receive in equal shares per stirpes the share of the trust estate which such deceased child would have received if living.

(3) If any of said children of the Settlor shall have died prior to the termination of the trust and shall have exercised the power of appointment given to him or her under this trust, then the Trustee shall pay over the part of said trust estate

Exhibit 2—(Continued)

subject to such appointment to those persons entitled thereto pursuant to such exercise.

(4) If any of said children of the Settlor shall have died prior to the termination of the trust without leaving issue surviving at the date of such termination and without having exercised the power of appointment given to him or her under this trust, then the share of said trust estate which such deceased child would have received if living shall be distributed by the Trustee in equal shares to the children of the Settlor named in Article II then living, provided, however, that the then surviving issue of any deceased child shall take per stirpes, the share which such deceased child would have taken if living.

Article IV. General.

(a) Payments to all the beneficiaries hereunder, excepting minors and persons under disability, shall be made only to such beneficiaries in person or upon their personal receipt, and no interest of any beneficiary in the income or principal of the trust estate shall be assignable in anticipation of payment, either by voluntary or involuntary acts of such beneficiary or by operation of law, or be liable in any way for such beneficiary's debts, including alimony.

(b) After the death of the Settlor, Mrs. William S. Jenks, and the widow of the Settlor, if he

Exhibit 2—(Continued)

leaves a widow him surviving who is entitled to receive income hereunder, any of the provisions of this trust may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by a majority of the children of the Settlor named in Article II then living and delivered to the Trustee; provided, however, that after the death of any of said children the trust may not be altered, changed or modified in any manner which materially affects the rights of those who take in substitution of any deceased child.

(c) Any Trustee at any time acting hereunder may resign by giving written notice of such resignation to the primary beneficiaries hereunder.

(d) The said Hyde Gillette shall have the right, in the event he resigns as Trustee hereunder, to appoint as Successor Trustee any person or corporation he may select to act as Successor Trustee; provided a majority of the beneficiaries hereunder approve of such selection in writing. In the event of the death, resignation, refusal or inability to act or to further act of said Hyde Gillette as Trustee hereunder without a Successor Trustee having been appointed as above provided, then Edwin Gillette shall be Successor Trustee, and he in turn, in the event of his resignation, shall have a similar right to appoint a Successor Trustee. In the event of his death, resignation, refusal or inability to act

Exhibit 2—(Continued)

or further to act as such Trustee without a Successor Trustee having been appointed as above provided, then The Northern Trust Company, of Chicago, Illinois, shall be Successor Trustee.

(e) Each Successor Trustee acting hereunder shall have and exercise all of the powers, authorities and discretions given to the original Trustee named herein. No Trustee hereunder shall ever be liable for any act or default of his predecessor Trustee or for any loss sustained by the trust estate through any error of judgment, but only for his, her or its own wilful default.

(f) This trust may be terminated or any of the provisions thereof may be altered, changed or modified in any respect at any time hereafter by an instrument in writing signed by the Settlor and delivered to the Trustee; provided, however, that said trust shall not be actually so terminated or modified until on the date fixed in such notice so given to the Trustee, and in no event until after the expiration of thirty (30) days from the receipt of such notice by the Trustee.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Seal] /s/ EDWIN F. GILLETTE,

[Seal] /s/ HYDE GILLETTE,

As Trustee.

Exhibit 2—(Continued)

State of Illinois,
County of Cook—ss.

I, Corinne Golightly, a Notary Public in and for the said County, in the State aforesaid, Do Hereby Certify that Edwin F. Gillette, a widower, and Hyde Gillette, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 17th day of September, A.D. 1938.

/s/ CORINNE GOLIGHTLY,
Notary Public.

To: Hyde Gillette, Trustee under Trust Indenture dated September 17, 1938, and recorded with the Recorder of Deeds of Cook County, Illinois, on September 19, 1938, as Document No. 12211894.

By Indenture dated September 17, 1938, I, the undersigned Edwin F. Gillette, Settlor in the Trust Indenture above described, conveyed to you as Trustee an undivided one-half ($\frac{1}{2}$) of the following described premises situated in the City of Chicago, County of Cook and State of Illinois, to-wit:

Exhibit 2—(Continued)

Those parts of Lots Five (5) Six (6) Seven (7) and Eight (8) in Block Twenty (20) in Fractional Section Fifteen (15) Addition to Chicago, bounded and described as follows: Commencing at the Southeast corner of the North one-third of said Lot Eight (8) in Block Twenty (20) aforesaid, thence North on the West line of Michigan Avenue and the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence West on a line parallel with the South line of said Lots Eight (8) and Seven (7), Two Hundred (200) feet; thence South on a line parallel with the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence East on a line parallel with the South line of said Lots Seven (7) and Eight (8) to the place of beginning, containing a piece of ground Sixty (60) feet front on Michigan Avenue by Two Hundred (200) feet more or less in depth; also known as Lot Five (5) in the Assessors Division of the North Half (N. $\frac{1}{2}$) of the South Two-thirds (S. $\frac{2}{3}$) of Block Twenty (20) in Fractional Section Fifteen (15) Addition to Chicago, to have and to hold upon the trusts and for the uses and purposes set forth in said Indenture.

At the time of the execution of said Trust Indenture I, the said Edwin F. Gillette, was a widower as therein stated, but at that time I contemplated marrying Harriette Marie O'Neil, who was then over 21 years of age, and therefore there was inserted in said Indenture a provision that if

Exhibit 2—(Continued)

the Settlor should marry and leave a widow him surviving, who was living with him as his wife at the time of his death, the Trustee should pay to such widow for and during the term of her natural life the sum of Fifteen Hundred Dollars (\$1,500.00) per year. On October 29, 1938, I did marry the said Harriette Marie O'Neil.

You Are Hereby Notified that I, the undersigned Edwin F. Gillette, Settlor in the Trust Agreement above described, in order to make it clear that the person who was intended to be provided for in said Indenture by the use of the words "such widow" was Harriette Marie O'Neil, who is my present wife, Harriette O'Neil Gillette, and no other person, do hereby, in pursuance of the power in me vested by the terms of said Trust Indenture, modify and alter the provisions of said Trust Indenture in the following respects:

(1) Strike out paragraph (a) of Article III which reads as follows:

"(a) Unless terminated as provided in paragraph (b) of this Article III, the trust hereby created shall terminate in any and the latest event, any provisions hereof the contrary notwithstanding, on the death of the last survivor of the following named persons: Mrs. William S. Jenks, Hyde Gillette, Edwin Gillette, Helen Gillette, Marietta Gillette Will and the widow of the Settlor, if he leaves a widow him surviving who is entitled to receive income hereunder."

Exhibit 2—(Continued)

and insert in lieu thereof a new paragraph (a) to be and read as follows:

“(a) Unless terminated as provided in paragraph (b) of this Article III, the trust hereby created shall terminate in any and the latest event, any provisions hereof to the contrary notwithstanding on the death of the last survivor of the following named persons: Mrs. William S. Jenks, Hyde Gillette, Edwin Gillette, Helen Gillette, Marietta Gillette Will, and my present wife, Harriette O’Neil Gillette. Wherever in this Trust Indenture the words “the widow of the Settlor,” “a widow,” or “such widow” are used the same are intended to refer to said Harriette O’Neil Gillette and to no other person.”

This modification of said Indenture shall become effective on the thirty-first (31st) day after a signed copy hereof has been delivered to and received by you.

The Settlor, Edwin F. Gillette and Harriette O’Neil Gillette, his wife, hereby agree that all of the provisions of said Trust Indenture dated September 17, 1938, not modified by this agreement shall remain and continue in full force and effect in every respect, and said Indenture as herein modified is hereby ratified, approved and confirmed in every respect as if the modification herein set forth had been originally inserted therein, and the undersigned Edwin F. Gillette and Harriette O’Neil Gillette, his wife, for the purpose of further assurance hereby convey and quitclaim to said Hyde

Exhibit 2—(Continued)

Gillette as Trustee the said premises described on page 1 of this instrument upon the trusts and for the uses and purposes set forth in said Indenture dated September 17, 1938 and recorded with the Recorder of Deeds of Cook County, Illinois, on September 19, 1938, as Document No. 12211894.

In Witness Whereof, we, the said Edwin F. Gillette and Harriette O'Neil Gillette, have hereunto set our hands and seals this 8th day of March, A.D. 1939.

[Seal] /s/ EDWIN F. GILLETTE.

[Seal] /s/ HARRIETTE O'NEIL
 GILLETTE,

State of California,
County of Los Angeles—ss.

I, M. L. Davidson, a Notary Public in and for said County in the State aforesaid, Do Hereby Certify that Edwin F. Gillette and Harriette O'Neil Gillette, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 8th
day of March, A.D. 1939.

[Seal] /s/ M. L. DAVIDSON,
Notary Public.

Exhibit 2—(Continued)

The undersigned, Hyde Gillette, as Trustee as aforesaid, does hereby acknowledge receipt of the above instrument modifying and altering the Indenture above referred to, and does hereby consent to and accept such modification.

Witness my hand and seal this 11th day of March, A.D. 1939.

[Seal] /s/ HYDE GILLETTE.

State of Illinois,
County of Cook—ss.

I, E. J. Kilcullen, a Notary Public in and for said County in the State aforesaid, Do Hereby Certify that Hyde Gillette, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the said instrument as his free and voluntary act and for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of March, A.D. 1939.

/s/ E. J. KILCULLEN,
Notary Public.

Exhibit 2—(Continued)

To: Hyde Gillette, Trustee under the Trust Indenture dated September 17, 1938, and recorded with the Recorder of Deeds of Cook County, Illinois, on September 19, 1938, as Document No. 12211894.

By Indenture dated September 17, 1938, I, the undersigned Edwin F. Gillette, Settlor in the Trust Indenture above described, conveyed to you as Trustee an undivided one-half of the following described premises situated in the City of Chicago, County of Cook and State of Illinois, to-wit:

Those parts of Lots Five (5) Six (6) Seven (7) and Eight (8) in Block Twenty (20) in Fractional Section Fifteen (15) Addition to Chicago, bounded and described as follows: Commencing at the Southeast corner of the North one-third of said Lot Eight (8) in Block Twenty (20) aforesaid, thence North on the West line of Michigan Avenue and the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence West on a line parallel with the South line of said Lots Eight (8) and Seven (7), Two Hundred (200) feet; thence south on a line parallel with the East line of said Lots Five (5) and Eight (8) Sixty (60) feet; thence East on a line parallel with the South line of said Lots Seven (7) and Eight (8) to the place of beginning, containing a piece of ground Sixty (60) feet front on Michigan Avenue by Two Hundred (200) feet more or less in depth; also known as Lot Five (5) in the As-

Exhibit 2—(Continued)

sessors Division of the North Half (N. $\frac{1}{2}$) of the South Two-thirds ($S\frac{1}{2}$) of Block Twenty (20) in Fractional Section Fifteen (15) addition to Chicago; to have and to hold upon the trusts and for the uses and purposes set forth in said Indenture.

At the time of the execution of said Trust Indenture, the above described real estate was under a long-term lease at an annual net rental of \$12,000 per year, my one-half interest in said rentals being \$6,000 per year. The lessee under said lease had an option to purchase the real estate. As you know, the lessee exercised said option during the year 1939, and as Trustee you received one-half of the proceeds from the sale of said real estate.

On the sale of said property a capital gain was realized, and as a result of this and the tax on the other income from the trust estate, I became obligated to pay income taxes of \$4,065.63 for the calendar year 1939. Income taxes in this amount were not contemplated at the time I executed said Trust Indenture.

I understand from you that during present conditions in the financial market it has been almost impossible for you to safely invest the proceeds received by you from the sale of the one-half interest in said real estate so as to yield for me as beneficiary of the Trust an annual income of \$6,000.

In view of the foregoing you are hereby notified as follows:

Exhibit 2—(Continued)

1. That I, the undersigned, Edwin F. Gillette, Settlor in the Trust Indenture above described, in pursuance of the powers in me vested by the terms thereof, do hereby terminate the Trust thereby created in so far as it relates to the sum of \$4,065.63, this being the amount of the income taxes I became obligated to pay for the calendar year 1939.

2. That I, the undersigned, Edwin F. Gillette, Settlor in the Trust Indenture above described in pursuance of the powers in me vested by the terms thereof, do hereby alter, modify and change said Trust Indenture by adding at the end of Paragraph (a) of Article II a new sentence as follows:

“It is the intention of the Settlor that the payments to him from said Trust Estate shall be at least \$6,000 per year over and above the amount the Settlor is required to pay each year as Federal Income Taxes on the income payable to him by the Trustee from the Trust Estate and on capital gains realized by the Trustee, and if the net income payable to the Settlor from said Trust Estate (after provision has been made for Federal Income Taxes as aforesaid) is in any year less than \$6,000, the Trustee shall pay to the Settlor so much of the principal of the Trust Estate as may be necessary to make up the difference between such net income payable to the Settlor from the Trust Estate and \$6,000; provided, however, that if under the provisions of this Paragraph (a) any income is payable

Exhibit 2—(Continued)

to Mrs. William S. Jenks in any year, such sums so paid to her shall be deducted from the \$6,000 which in that year would otherwise be payable to the Settlor.”

This modification of said Indenture dated the 17th day of September, A.D. 1938, shall become effective on the 31st day after a signed copy thereof has been delivered to and received by you.

In Witness Whereof, I, the undersigned, Edwin F. Gillette, have hereunto set my hand and seal this Third day of September, A.D. 1940.

[Seal] /s/ EDWIN F. GILLETTE.

State of Illinois,
County of Cook—ss.

I, Donald P. Foudriat, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that Edwin F. Gillette, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 3rd day of September, A.D. 1940.

[Seal] /s/ DONALD P. FOUDRIAT,
Notary Public.

My Commission Expires February 11th, 1944.

Exhibit 2—(Continued)

The undersigned, Hyde Gillette, as Trustee as aforesiad, does hereby acknowledge receipt of the above instrument modifying and altering the Indenture above referred to, and does hereby consent to and accept such modification.

Witness my hand and seal this 3rd day of September, A.D. 1940.

[Seal] /s/ HYDE GILLETTE.

State of Illinois,
County of Cook—ss.

I, Donald P. Foudriat, a Notary Public in and for said County in the State aforesaid, do hereby certify that Hyde Gillette, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the said instrument as his free and voluntary act and for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of September, A.D. 1940.

[Seal] /s/ DONALD P. FOUDRIAT,
Notary Public.

My Commission Expires February 11th, 1944.

Exhibit 2—(Continued)
(Copy)

Modification of Indenture of Trust

Dated September 17, 1938

October 19, 1942

Mr. Hyde Gillette
135 S. LaSalle St.
Chicago, Illinois

Dear Hyde:

Under the indenture of trust dated September 17, 1938, and recorded with the Recorder of Deeds of Cook County, Illinois, as document number 12211894, I understand there is some question as to whether you have the express authority to delegate your powers as trustee to any other person, and since you plan to enter the United States Army, I can readily understand that it is important that you be able to do this.

As the settlor of said trust I hereby expressly authorize you, commencing on the thirty-first day after you receive this letter, to delegate to any other person or persons any and all powers, discretionary or ministerial, vested in you as such trustee, notwithstanding any omission of such authority of any contrary power, if any, in said indenture of trust.

Affectionately yours,

EDWIN F. GILLETTE, (Sgd)

EDWIN F. GILLETTE.

Exhibit 2—(Continued)

State of Illinois,
County of Cook—ss.

The undersigned, Hyde Gillette, being first duly sworn, deposes and says: That he is the trustee under indenture of trust dated September 17, 1938, and recorded with the Recorder of Deeds of Cook County, Illinois, as document number 12211894, and that on October . . , 1942, he received the instrument signed by Edwin F. Gillette to which this affidavit is attached, modifying and altering the indenture of trust referred to in said instrument and this affidavit, and the undersigned as such trustee does hereby consent to and accept such modification.

.....
Trustee under Indenture of
Trust Dated September 17,
1948.

Subscribed and sworn to before me this . . day
of October, A.D. 1942.

.....
Notary Public, Cook County,
Illinois.

My commission expires.....

EXHIBIT 3

This indenture, made this 19th day of September, A.D. 1938, by Edwin F. Gillette, residing in Pasadena, California, (herein called First Party), and Harriette Marie O'Neil, residing at Pasadena, California, (herein called Second Party), witnesseth:

Whereas, a marriage is contemplated by and between the parties hereto; and

Whereas, Second Party has been fully informed as to what her statutory rights would be in First Party's property as the wife or widow of First Party; and

Whereas, First Party has recently made the following conveyances of certain properties owned by him:

(1) He has recently given his undivided one-half interest in certain real estate located at the Southwest Corner of Madison and Dearborn Streets, Chicago, Illinois, known as the Hartford Building, in trust to his four children and no longer has any interest therein. This property was owned jointly with First Party's sister, Mrs. William S. Jenks. There is an \$85,000.00 mortgage against the entire property. During the past year First Party has received not more than \$1,500.00 of income from the property. After deducting one-half of the amount of the \$85,000.00 mortgage, it is estimated by the First Party that his one-half interest in said property was worth not more than \$175,000.00. First Party is indebted to his sister, Mrs. William S. Jenks on two promissory notes totalling \$40,000.00 and there is accrued and unpaid interest on said notes amounting to approximately \$4,000.00. The Trustee to whom this property has been conveyed has assumed First Party's indebtedness to his sister and it is contemplated that she will re-

lease First Party from any personal liability to pay the same;

(2) He has recently conveyed his undivided one-half interest in certain property located in the 1000 Block South Michigan Avenue, Chicago, Illinois, in trust for the ultimate benefit of his four children. This property is under long term lease to Edward J. Lehmann, et al. First Party's share of rent under said lease was \$6,000.00 per year. This property will be hereinafter referred to as the Michigan Avenue Property. It is estimated by First Party that a one-half interest in this property was worth not more than \$100,000.00. Under the terms of the trust First Party is to receive the net income during his life subject to a provision that under certain conditions \$1,000.00 per year of the net income of the trust may be payable to First Party's sister, Mrs. William S. Jenks; and

(3) He has recently made an outright conveyance of an undivided one-half interest in his summer home at Lake Beulah, Wisconsin to his four children. First Party estimates a one-half interest in this property was worth approximately \$10,000.00.

The values placed on the properties mentioned in (1), (2) and (3) above are merely estimates made by First Party, and First Party makes no representation that the values so placed thereon by him are the full, fair, cash values of such properties; and

Whereas, the following is a list of the property now owned by First Party:

(1) Residence property on LaLoma Road, Pasadena, California, the value of which is estimated by First Party to be approximately \$15,000.00;

(2) Approximately 333 acres of mountain property near Columbine Lodge, Estes Park, Colorado. First Party estimates that this property is worth approximately \$16,000.00; and

(3) A mining property near Colorado Springs, Colorado known as McDill Placer No. 4120. First Party estimates that this property is worth approximately \$5,000.00; and

(4) Securities and other personal property estimated by First Party to be worth approximately \$10,000.00.

The values placed on the properties mentioned in (1), (2), (3) and (4) above are merely estimates made by First Party, and First Party makes no representation that the values so placed thereon by him are the full, fair, cash values of such properties; and

Whereas, the First Party has fully informed the Second Party of his financial situation, including the amount of his assets, liabilities and net income; and

Whereas, First Party intends to provide by an intervivos trust, will or otherwise for the payment out of the income of the property above referred to as the Michigan Avenue Property of the sum of Fifteen Hundred Dollars (\$1500.00) per year to Second Party for and during the term of her nat-

ural life commencing with the death of First Party, provided Second Party is living with First Party as his wife at the time of his death; and

Whereas, it is the intention of Second Party by this indenture,

(1) To waive, relinquish and bar her dower interest as the wife, or widow, of the First Party in and to all of First Party's lands, messuages, tenements and hereditaments, and to empower and authorize the said First Party, at any time, during the existence of coverture between the parties, or, at his death, his heirs, executors or administrators, to mortgage, or otherwise encumber, and to sell, assign, grant, or convey, any and all of the said lands, messuages, tenements and hereditaments, and to make and execute good and sufficient deeds, or other instruments, therefor, independently, and without the consent, or privity, of the Second Party; and

(2) To waive, relinquish and bar the dower interest of the Second Party as the wife, or widow, of the First Party, in and to all lands, messuages, tenements and hereditaments that he may hereafter become seized of, or that may be owned by him, at the time of, or after, their marriage, and to authorize the mortgaging, encumbering, or conveyance, thereof, in the same manner as the lands, messuages, tenements and hereditaments now seized by him; and

(3) To waive, relinquish and bar, as well, all the homestead rights, or interests of the Second Party and all other rights, statutory or otherwise, of Second Party, as the wife, or widow, of the First

Party, in and to any of the said real property, or interests therein, now owned by the First Party, or that the First Party may be seized of, whether before, or during the period of coverture;

Now, Therefore, This Indenture Witnesseth:

(1) That for and in consideration of the provisions made or to be made for the payment to her out of the income of the property known as the Michigan Avenue Property of the sum of Fifteen Hundred Dollars (\$1500.00) per year for and during the term of her natural life commencing upon the death of First Party, provided Second Party is living with First Party as his wife at the time of his death, and in further consideration of the solemnization of the said proposed marriage between First Party and Second Party, the Second Party hereby waives, relinquishes, bars and surrenders, and hereby agrees to, and does, waive, relinquish, bar and surrender:

(a) All of her right, title and interest, statutory or otherwise, that shall, or may, be hereafter vested in her, because of her said marriage, as the wife, or widow, of the First Party, and consisting of both dower and homestead rights, title and interest, in and to all lands, messuages, tenements and hereditaments now owned by the said First Party, and in and to any and all lands, messuages, tenements and hereditaments that the First Party may hereafter own, acquire, or become seized of;

(b) All homestead rights that shall, or may, vest in her, by virtue of her said marriage with the First

Party, in and to the lands, messuages, tenements and hereditaments that the First Party now has, or that he may hereafter be vested with, or that may hereafter be conveyed to, and vest in, the First Party, during coverture, as aforesaid.

(2) That the Second Party promises and agrees that she will, at the request of the First Party, or of his executors, administrators, or assigns, and at any and all times, as he, or they, may desire, execute, jointly with him, or with them, any and all mortgages, or deeds of conveyance, of any of the real estate, now, or hereafter owned by him, or of which he may hereafter become seized, so that such mortgages, or deeds of conveyance, when executed and recorded, shall show a perfect record title; it being expressly understood and agreed, however, that the First Party, his heirs, executors, administrators, or assigns, may encumber, or convey, any and all of such real estate that he now is, or shall hereafter be seized of, without the Second Party joining with him, or with them, in such deed, or instrument, and that such deed of conveyance, or other instrument, without the signature of the Second Party, shall pass a clear and perfect title to the said land so conveyed, or encumbered, and shall bar her dower and homestead rights to the same extent as though the Second Party had joined with the First Party, or with his executors, administrators, or assigns, in such deed, or deeds, of conveyance, or other instrument.

(3) That in consideration of the promises and undertakings herein made and entered into by the Second Party, the First Party hereby promises and agrees that he will by an inter vivos trust, will or otherwise provide for the payment out of the net income of the property referred to herein as the Michigan Avenue Property of the sum of Fifteen Hundred Dollars (\$1500.00) per year to Second Party for and during the term of her natural life commencing with the death of First Party, provided Second Party is living with First Party as his wife at the time of his death.

(4) That this agreement shall become effective only in the event that the contemplated marriage between the parties hereto shall be solemnized.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Seal]

EDWIN F. GILLETTE,

[Seal]

HARRIETTE MARIE O'NEIL.

State of Illinois,
County of Cook—ss.

I,, a Notary Public in and for the said County, in the State aforesaid Do Hereby Certify that Edwin F. Gillette personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said

instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of September, A.D. 1938.

.....
Notary Public.

State of Illinois,
County of Cook—ss.

I,, a Notary Public in and for the said County, in the State aforesaid Do Hereby Certify that Harriette Marie O'Neil, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of September A.D. 1938.

.....
Notary Public.

EXHIBIT 4

Last Will and Testament

In the Name of God, Amen, I, Edwin Fraser Gillette, residing at 691 La Loma Road, Pasadena, of Los Angeles County, State of California, at the age of 75 years, and being of sound and disposing mind and memory and not acting under duress,

menace, fraud, or undue influence of any person whatever, do make, publish and declare this my last Will and Testament in the manner following, that is to say:

First: I direct that my Executor, hereinafter named, pay all my just debts and funeral expenses, as soon after my decease as conveniently may be.

To my beloved wife, Harriette O'Neil Gillette, Secondly: I give, devise and bequeath: All my properties, real, personal and mixed, of whatever kind and wheresoever situate, and more particularly described on Page 2, of this instrument:

The Residence, located at 691 La Loma Road, in Pasadena, Los Angeles County, California, and described as follows:

In Grand Avenue Electric Tract, No. 1 (As per Book 5, Page 125, of Maps, Records of Los Angeles County.) South 14 feet of Lot 13, South 64 feet of Lot 14, all of Lot 27, all of Lot 28. Together with all furnishings, fixtures, paintings and books therein contained. (Tax Valuation, \$9,120.00).

Also a Tract of Land, comprising 336 acres, more or less, in Larimer County, Colorado, and described as follows:

The South Half of the South-West Quarter of Section 22, the North half of the North-West Quarter, the North half of the South-West Quarter, the West half of the North-East Quarter, the West half of South-East Quarter, less 63.7 acres; all in Section 27.

Also a Road, 16 feet wide and One quarter mile

long, in the East half of the South-East Quarter of Section 27. All in Township 4, North, Range 73 West of the Sixth Principal Meridian. Together with the two-story pole and frame Cabin, situate in the North-West Quarter of the South-East quarter of Section 27. (Tax valuation, \$2,500.00, records of Larimer Co., Fort Collins.)

Also the mining property known as the McDill Placer Mining Claim, U. S. Survey No. 4120; and situate in the Pollock Mining District, County of Summit, and State of Colorado, and containing 127 acres, more or less, of mineral land. (Tax valuation, \$23,000.00, records of Summit Co., Breckenridge.)

Lastly, I hereby nominate and appoint my wife, Harriette O'Neil Gillette, the executrix of this my last Will and Testament to serve without any bond being required and hereby revoke all former Wills by me made.

In Witness Whereof, I have hereunto set my hand and seal this twenty-fourth day of April, in the year of our Lord nineteen hundred and thirty-nine.

[Seal] /s/ EDWIN F. GILLETTE.

The foregoing instrument, consisting of three pages including this one was at the date hereof, by the said Edwin Fraser Gillette, signed, and sealed and published as, and declared to us to be his last Will and Testament, in the presence of us, who, at

his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

/s/ FRED M. TAYLOR

Residing at 1669 Casa Grande
Pasadena, Calif.

/s/ CHARLES D. SNYDER

Residing at 514 So. Arroyo Blvd.
Pasadena, Calif.

Filed T.C. U.S., June 10, 1948.

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT
AND OPINION.

Disney, Judge:

This case involves estate tax. Deficiency was determined in the amount of \$40,653.10. The question presented is whether decedent transferred his interest in two pieces of property in contemplation of death within the intent of section 811(c) of the Internal Revenue Code. No issue is taken by the petitioner with the values placed by the Commissioner on the properties. The parties have stipulated that additional expense in the administration of the estate may be determined under Rule 50. A stipulation of facts was filed, is adopted by reference, and the facts therein set forth are found by us. Such parts of the stipulated facts as are re-

garded as pertinent are included, with facts found from evidence adduced, in our

Findings of Fact.

The petitioner's decedent, Edwin F. Gillette, was born on October 19, 1863, and died on December 10, 1943, a resident of Pasadena, California, leaving him surviving his widow, Harriette O'Neil Gillette; two sons, Hyde and Edwin, and two daughters, Helen Gillette and Marietta Will.

The estate was administered in the Superior Court of the State of California in and for the County of Los Angeles. The executrix is decedent's widow.

On September 17, 1938, the decedent and his sister, Mrs. William S. Jenks, each owned, by inheritance from their father, an undivided one-half interest in three real estate properties, as follows: The Hartford Building, on Madison and Dearborn Streets, and the "Michigan Avenue property" on South Michigan Avenue, both in Chicago, Illinois, and the "Lake Beulah property" at Lake Beulah, Wisconsin. On that date decedent conveyed his interest in the Hartford Building to his son Hyde in trust for decedent's four children, conveyed his interest in the Michigan Avenue property to Hyde as trustee, and conveyed his interest in the Lake Beulah property by warranty deed to the four children. Decedent was at the time a widower but was contemplating marriage with Harriette Marie

O'Neil and on September 19, 1938, they entered into an ante-nuptial agreement in writing.

The trust deed covering the Hartford Building provided, in material part, that, in consideration of the trustee's assumption of and agreement to pay, but only from assets of the trust, decedent's indebtedness on promissory notes to his sister Mrs. William S. Jenks in the amount of \$40,000 and \$4,000 accrued unpaid interest, and to pay future interest, the decedent transferred his half interest in the Hartford Building; that trust income should be paid equally to decedent's four children, for life, and, under the will of any child dying, to descendants or spouse of any such child; that the trust should terminate upon the death of the last survivor, of the four children, and Mrs. William S. Jenks, but after death of Mrs. William S. Jenks could be terminated by written instrument signed by a majority of the children; that upon termination of the trust the trust principal, including any accumulated income, should be distributed to the four children, if living, and to the issue of any deceased child, or to his appointee by will, otherwise equally to the survivors among the four children, and per stirpes to issue of any other deceased child; that a majority of the four children or the survivors thereof could by writing alter, modify, or change the trust in any respect, but not, after the death of one, so as materially to affect the rights of those substituted for a deceased child.

The note referred to in the trust instrument as

for \$40,000 and accrued interest was, in fact, for \$41,560. It was a renewal on December 23, 1936, of a note for \$34,000 given by decedent to his sister in 1931. Decedent paid the interest in 1931 and 1932 but never thereafter.

On September 17, 1938, Hyde wrote decedent a letter stating, in material part, that he as trustee assumed and agreed to pay, but only out of the trust assets, the indebtedness to Mrs. Jenks, and would save decedent harmless with reference thereto. Since that time the trustee has paid the interest to Mrs. Jenks from that trust, it being unnecessary to call upon the Michigan Avenue trust for any interest, (under the provisions hereinafter set forth). The record does not disclose whether Mrs. Jenks released the decedent from the indebtedness on the note.

The trust instrument conveying the Michigan Avenue property to Hyde Gillette as trustee provided, in material part, that trust income should be distributed as follows: To the settlor, the decedent, except that Mrs. William S. Jenks should during her life receive \$1,000 a year or such part thereof necessary to pay her \$1,000 a year whenever the trust covering the Hartford Building did not pay her that much interest on the \$40,000 indebtedness; that after settlor's death income should go to assure Mrs. William S. Jenks \$1,000 a year either from the Hartford Building trust or the Michigan Avenue property trust, and if settlor should marry and leave surviving him a widow who was living with

him at his death to pay such widow \$1,500 per year for life; that other income should be paid for life to decedent's four children or to their descendants or spouses as appointed by their wills, or in case of no such appointment, per stirpes to their surviving issue, or, if none, to surviving issue of the decedent; that the trust should terminate on the death of the last survivor of the four children, Mrs. William S. Jenks, and settlor's widow, or by a written instrument signed by a majority of the children; that upon termination of the trust, principal and accumulated income should be distributed equally to the four children if living, but if any were dead to his issue or appointees by will; that the trust could, after death of the settlor, his widow, and Mrs. William S. Jenks, be altered, changed, or modified in any respect by a written instrument signed by a majority of the settlor's living children, but not to affect materially the rights of those substituted for a deceased child; that the trust could be terminated, altered, or modified in any respect at any time by the settlor, in writing.

The ante-nuptial agreement between decedent and Harriette Marie O'Neil provided, so far as material, as follows: That the parties contemplated marriage; that Harriette O'Neil "has been fully informed as to what her statutory rights would be" as wife, or widow; that decedent had recently conveyed his half interest in the Hartford Building in trust for his four children, subject to a mortgage of \$85,000 against the whole property; that after de-

ducting one-half of the \$85,000 it is estimated that the half interest is worth \$175,000; that decedent was indebted to his sister, Mrs. William S. Jenks, on promissory notes totaling \$40,000, with accrued unpaid interest of \$4,000, and that the trustee has assumed that debt, from which it is contemplated the sister will release him, the decedent; that he has recently conveyed his one-half interest in the Michigan Avenue property "in trust for the ultimate benefit of his four children;" that his half interest is estimated to be worth not more than \$100,000; that he is to receive for life the net income, which was \$6,000 under a lease, subject to possible payment of \$1,000 a year to Mrs. William S. Jenks; that he has recently conveyed outright his half interest, estimated to be worth \$10,000, in the Lake Beulah property to his four children; that he owns a residence in Pasadena, California, 333 acres of mountain property, and a mining property in Colorado, and securities and personal property, estimated at \$10,000; that he intends to provide \$1,500 a year, from income of the Michigan Avenue property for his wife for her life after his death; that it is the intent of Harriette O'Neill to waive, relinquish, and bar her dower interest as wife or widow and homestead rights in decedent's property owned or to be owned by him; therefore, that in consideration of the payment to her of the \$1,500 per year for her life after decedent's death, and in consideration of marriage, Harriette O'Neil relinquishes, bars, and surrenders all her rights because of mar-

riage, both dower and homestead, in the property owned or to be owned by the decedent, that she will join him, his heirs, administrators, executors, or assigns in any conveyances thereof, and he, his heirs, executors, administrators, or assigns may convey such properties without her joining.

The decedent was not a man of business. Though well educated, including a course in architecture, he followed neither that profession nor any other for a livelihood. He was interested in studying and composing poetry in French, and in doing beautiful cabinet work in a workshop, interested himself in his fraternities and the publication of one, in a hunt club, a choral society, a tennis and swimming club. He drove a car a great deal and was interested in photography. He devoted all of his time to the above pursuits. Since 1917 he had resided in Pasadena, California. He lived upon the income from property inherited from his father. He and his sister, Mrs. William S. Jenks, had inherited, in equal shares, three pieces of real estate, that is, a summer home at Lake Beulah, Wisconsin, a 14-story office building in the Loop district of Chicago, hereinafter called the Hartford Building, and a property on Michigan Avenue, Chicago, referred to hereinafter as the Michigan Avenue property. The latter was in 1931 subject to a 198-year lease, producing \$12,000 a year; also an option, held by the lessees, to sell to the lessee for \$375,000, \$75,000 of which had been paid. To assure delivery of and good title to the property under the option the

Jenks family and decedent and his then wife had in 1931 given a bond for \$75,000, secured by a trust deed on the property. The lessee-optionee was required either to erect an office building or put up as a guaranty for such erection \$100,000 in securities by March 1, 1939. The Hartford Building was in the hands of building managers, employed by Hyde Gillette, under power of attorney from his father and aunt. It was subject to a mortgage of \$85,000. From December 1933 to September 1938 the building was in a run-down condition and had produced no net income for its owners, except \$310 to each in January 1938 and \$593.78 to each in August 1938. Decedent's half interest was worth about \$120,000. His interest in the Lake Beulah property was worth about \$10,000.

The decedent also owned his home in Pasadena, California, estimated by him to be worth \$15,000, about 333 acres of mountain land in Estes Park, Colorado, estimated by him to have a value of \$16,000, a mining property in Colorado, estimated by him to be worth \$5,000, and securities and other personal property which he estimated at \$10,000. He estimated his interest in the Hartford property was worth about \$175,000 above the mortgage, and that his interest in the Michigan Avenue property was worth about \$100,000.

In 1938 Mrs. William S. Jenks and her husband, Hyde Gillette and Marietta Will lived in or near Chicago. Hyde, now aged 42, was an investment banker in Chicago. Marietta's husband, Howard

Will, now aged 49, had been an attorney in Chicago since about 1924. The Gillette and Jenks families had a close friendly relationship. Mrs. Jenks was very fond of her brother's children. She had no other nieces or nephews. She and decedent were very devoted to each other.

On May 8, 1938, the decedent wrote Hyde, with an identical letter to each of the other children, in effect, that he had been urging one Harriette O'Neil to marry him, but that she heitated to come into the family, and to give up the freedom which as a bachelor girl she had long enjoyed; that they were lovers "seeking such happiness as may be found at this late date"; that he would welcome any procedure tending to overcome her diffidence in meeting the members of the family; and that he hoped the letter would have favorable consideration. Harriette O'Neil was then 41 years of age; the decedent 75.

The decedent's children, upon learning of the suggested marriage, were pleased at the prospect, except that the record does not indicate the attitude of Helen.

Hyde discussed the proposed marriage with the Jenks family first in May 1938 shortly after he received his father's letter. Mr. Jenks, who largely looked after his wife's interests, took a different view from that of the children, and his wife to a lesser degree. He did most of the talking on the subject, and at times was loud and bitter on the subject. It was discussed by Hyde and the Jenks

family several times, both in Chicago during the summer and at Lake Beulah in August and September. Howard Will joined in the later discussions. The Jenks family was unhappy at the idea. They did not see how decedent could afford to marry, and pointed out that he was receiving only \$6,000 per annum from his interest in the Michigan Avenue property; that he was indebted to Mrs. Jenks on a note, upon which he was not paying the interest; and that they felt that he should not take on additional obligations; also that marriage involved additional expense and that decedent might possibly encumber his sister's interest in the Hartford Building and Michigan Avenue properties; and that if the optionees on the Michigan Avenue property elected to purchase, it might not be possible to give clear title. Jenks pointed out that this might be ruinous for the two families because the Michigan Avenue property represented their only remaining source of income. Jenks at one time said that he would see that decedent was sued for collection of the notes before he incurred further obligations, or he would stop the marriage. Mr. and Mrs. Jenks did not insist that the two trusts contain provisions relative to the distribution of corpus to the children at termination. Their primary interest was to get the note secured. Will never explained to them the complete distribution of the trust corpus. Jenks and his wife, as to the Lake Beulah property, also indicated that having a new head of the family brought to Lake Beulah would

be complication. Decedent had not been paying promptly his share of the expense of that property. It was used by both families, including grandchildren, as a summer home.

Hyde Gillette felt that he would like to do anything he could to prevent a rift in the family, and resolved to try to do something to prevent Jenks expressing his strong feelings about the unpaid note. He approached Jenks, pointed out the feeling that was developing between decedent and his sister, and asked if he could not do something to keep harmony. There had been acrimonious exchange of letters in the past, which had "blown over," and Hyde knew that decedent would become excited and extremely headstrong if Jenks repeated his statement to decedent. Hyde counselled Howard Will and his law firm, and it was felt that the decedent's indebtedness to Mrs. Jenks might be secured by his interest in the Hartford Building. After further discussion it was decided that since Hyde was handling the Hartford Building he might as well be appointed as trustee and the Hartford Building transferred in trust to him. Jenks was adamant on Mrs. Jenks receiving some interest and Hyde decided that he would see that she was guaranteed at least \$1,000 per year out of the approximately \$2,000 interest due her, so he proposed that part of the decedent's \$6,000 income from the Michigan Avenue property assure Mrs. Jenks of the \$1,000; and he felt that a trusteeship in him, over the Michigan Avenue property, was a logical vehicle to assure the payment of

the \$1,000 to Mrs. Jenks, if the Hartford trust was unable to do so. The Michigan Avenue trust was also created to assure delivery of title, in case of exercise of the option, as Jenks suggested that an uncooperative wife of the decedent might hamper the transfer under the option and cause default. Such a trust would also make it more difficult for decedent to encumber his sister's interest.

Howard A. Will prepared the trusts.

Hyde did not desire to engage in correspondence on the subject and wanted to handle it orally with his father. He did not wish to create friction between his father and Jenks. His father was never told about Jenks' statement about suit on the note; but the decedent did know that the Jenks family had objections to the marriage, in connection with the indebtedness on the note. Hyde and Will explained, in general, to Jenks and wife what they contemplated doing.

On June 23, 1938, Miss Harriette O'Neil came through Chicago on the way to visit farther east. She had lunch with Hyde Gillette, whom she then met for the first time, and left that evening for the east. The decedent had previously told her that his family was pleased with the idea of the proposed marriage to her, but that Jenks and wife were not pleased, that his sister was annoyed, and that he was behind on interest but the pressure came when possible marriage came up. He had said nothing to her about a pre-nuptial agreement. She met

Hyde at decedent's suggestion because she wished to meet all his family before the marriage. She spent about an hour and a half with Hyde. He seemed very friendly about the marriage, told her that the Jenks family was not pleased, from a financial point of view, mentioned a large debt, and that the Jenks family felt that his father could not take on extra expense, that the upkeep of the Lake Beulah property was a burden, and that possibly his father and his wife would not be interested in coming to Lake Beulah regularly, and perhaps some arrangement could be made for them to come as guests once in a while. She told him she so preferred, rather than continue the upkeep and joint ownership and use. She was not concerned because she thought probably some arrangement could be worked out to satisfy the Jenks family. Antenuptial agreement was not mentioned. Hyde told her that he and Mr. Will were working on a plan which they thought might take care of the matter and not jeopardize his father's interest. He mentioned the plan in general terms. It had not at that time been completely formulated. It was not until later, after talks with Jenks and his wife, that Hyde and Will arrived at a definite plan. It was entirely completed before the decedent came east, but no documents had been drawn because Hyde wished to discuss the matter with his father and see what he thought of it.

About August 1, 1938, decedent arrived in Chicago. He and Hyde had lunch together that day.

Hyde told him in general terms of Jenks' attitude toward getting some payment on the notes, and then suggested the arrangements that had been decided upon. He did not tell his father what Jenks had said about suit on the note; did not wish to make his father angry. Decedent's reaction to the plan was that if Howard (Will) and Hyde "thought it was all right and it met the problems that had arisen, for us to go ahead and draw the instruments." The matter was discussed practically not at all with the decedent after the instruments were prepared. Hyde gave the instruments to his father to read and explained them in general, not in detail but more in terms of the general principles involved. He told his father that his one purpose was to permit him to continue a happy life and to get married with the friendly feeling of all the family, which could be accomplished by some arrangement definitely to take care of the interest on the note. Decedent left the matter entirely in the hands of Hyde and Howard. Hyde tried to make it perfectly clear to his father what the documents meant and covered, but had no special conference with him. Hyde originated the idea of transferring the Lake Beulah property, and the idea of providing \$1,500 per year for the new wife, in order to make the arrangement acceptable to his father. There was no discussion of a will. It was Hyde's purpose to keep the Jenks family and his father apart and they never discussed the matter in Hyde's presence. Hyde knew what he wished to accomplish.

He does not remember ever showing the documents to Jenks or his wife. He told her in a general way what they contained. Jenks did not suggest any method of getting interest paid on the note. Hyde took it upon himself to find a way. He showed his father and Mrs. Jenks that the Hartford property was gradually improving and he thought that some day the earnings would also improve. Though the trust on the Michigan Avenue property was revocable, Hyde did not then feel that his father would revoke it, thinking his father was not sufficiently interested in business details to take the trouble to make that step.

Howard Will was never asked by the decedent to prepare the transfers. During July and August 1938 Hyde and he discussed the matter. Will devoted several days to drafting the instruments. One of the senior members of his firm, who collaborated with him, was familiar with Federal tax matters. That member of the firm suggested the pre-nuptial agreement. Will discussed the plan with Hyde from as early as June 1938.

On September 17, 1938, the decedent signed the trust agreements. Will went over them with decedent, "high spotted the documents, the important provisions" and discussed them "rather thoroughly" with him. Will gave decedent the ante-nuptial agreement, suggesting that he take it with him and discuss it with Miss O'Neil, and it was arranged for her to come in on Monday the 19th to sign or discuss it. She was at Kenilworth, Illinois, and

decedent went there to spend the week-end, the 17th and 18th of September. He did not discuss the ante-nuptial agreement with her but told her that Hyde and Will were writing up some papers to that effect. She came in on Monday, September 19th, to Hyde's office. She, decedent, Hyde and Will were present. She then met Will for the first time. He suggested that she should have a lawyer to look over the papers, but she felt it to be unnecessary. She read the ante-nuptial agreement, which mentioned the trust agreements, and they were explained to her "more or less" before she signed. She realized, when she read the agreement, that the transfers had previously been made.

Decedent and Harriette O'Neil were married October 29, 1938, and lived together until his death. On April 24, 1939, the decedent executed his will, giving, devising, and bequeathing all of his property to his wife. His children were not mentioned in the will. He did not discuss it with his wife and she did not at the time know that he had executed it.

Decedent was not seriously ill at any time prior to his last illness, except for colds, and was not attended by a physician until the day he died, when his wife, against his will, called a doctor. He had for two or three weeks complained of not feeling exactly as usual. He stayed in bed two days before his death. The physician, about ten o'clock in the morning, told her decedent's kidneys were not functioning correctly, and for him to keep warm and

stay in bed. He died about two o'clock that day. The certificate of death states coronary thrombosis due to kidney infection as cause of death.

The lessees of the Michigan Avenue property exercised their option thereon in the spring of 1939 and paid for the property \$300,000, one-half of which went to Mrs. Jenks, who requested Hyde to invest it in securities for her. She still owns them.

The decedent, on September 3, 1940, amended the trust of the Michigan Avenue property to provide a minimum income to him of \$6,000 per year (if necessary, to be paid from principal) except any payment necessary to Mrs. William S. Jenks.

In December 1940 Mrs. Jenks created a trust, drawn largely by Will. Therein she transferred her half interest in the Hartford property to Hyde Gillette in trust to pay the income to her four nieces and nephews, or their issue, for life, the corpus to go to them on termination.

The petitioner filed the decedent's estate tax return on or about March 3, 1945, with the collector at Chicago, showing a total estate tax payable of \$45,064.39, which was paid as follows:

9-27-44	\$12,158.49
3-10-45	32,905.90

The return did not include as a part of the decedent's gross estate the ownership of any interest in the two tracts of real estate described above, respectively, as the Hartford Building and the Lake Beulah, Wisconsin, property. In his notice of de-

ficiency herein the respondent has included in the value of the petitioner's gross estate the value of the two tracts of real estate under section 811(c) of the Internal Revenue Code.

OPINION

Did the Commissioner err, under the facts found above, in including the Beulah Lake and Hartford Building properties in decedent's gross estate? No question is raised as to the values used by him. The question is solely one as to whether the transfers were in contemplation of death. Moreover, the respondent does not argue that the decedent was in poor physical or mental condition at the date of transfer. In fact, the decedent appears to have been in good condition until very shortly before his death more than five years later at the age of 80 years.

It is not necessary to cite cases to support the statement that the question is one of fact on all of the evidence, or that the petitioner, the Commissioner having determined that the transfers were made in contemplation of death, has the burden of proof to demonstrate the contrary.

Upon careful examination of the facts which we have found in detail, we have come to the conclusion that the petitioner has not met the burden imposed. We find the evidence to be in a peculiar condition. Though the crux of the matter is as to what the decedent contemplated, the record is almost, if not quite, barren as to what he actually had in mind. A

great deal of evidence appears as to what his son and son-in-law intended in drawing the instruments which the decedent signed; also to show the intention of Jenks, and to a lesser degree of his wife. But remarkably little gives any real view of the state of mind of the decedent, as to what he did or did not contemplate, in making the transfers involved. What little does appear does not, in our opinion, by any means suffice to overcome the presumption of correctness of the Commissioner's determination.

It does not appear necessary to discuss at great length the facts involved and above detailed. The petitioner's position amounts to this: That Jenks, for himself and his wife, opposed the marriage because of her financial interest, in securing protection on the note, resulting in the transfer of the Hartford Building property; and because of decedent's failure to pay expense of the Lake Beulah property, and desire that a new wife not intrude therein, resulting in the transfer of the Lake Beulah summer home. Yet the Hartford Building property was, as to decedent's interest, estimated by him as worth about \$175,000, and no issue is taken on the Commissioner's figure of \$120,621.32, whereas the indebtedness on decedent's note was about \$45,000 including interest, while the record indicates nothing as to what decedent owed on upkeep of the Lake Beulah property, valued as to his one-half at \$10,000. Yet we find both properties transferred, not merely as security for the

amounts owed by the decedent, but absolutely, and to his children directly as to the Lake Beulah property, and, as to the Hartford property, to them as beneficiaries of a trust, which was to save decedent from the \$45,000 indebtedness—though, in fact, the record fails to show any release of decedent upon such indebtedness by Mrs. Jenks, the holder. It is, of course, at once obvious that a conveyance of the property by way of security, by mortgage or deed of trust, conditioned upon payment of the indebtedness on the decedent's note without the further transfer of the corpus to the children as beneficiaries, would have given Mrs. Jenks just the same protection as she received from the conveyance of the Hartford Building; and it is equally obvious that the outright deed of the Lake Beulah property was unnecessary to protection of the petitioner's share of expense thereon, so far as finance is concerned. Why then did the decedent make the further and financially unnecessary conveyances to the children? The element of lack of financial necessity therefor destroys, in our view, the argument that the dominant motive in the transfers was the satisfaction of Jenks and wife. It simply is not reasonable to say that it was necessary to transfer to the children, as well as secure Mrs. Jenks. Nothing in the record indicates that she, or her husband for her, required conveyances of the breadth actually made. On the contrary, Will, when asked "was it Mr. and Mrs. Jenks' thought at all, did they insist that the provisions go in, the two trusts rela-

tive to the distribution of corpus to the children at termination of such trust?" answered "No, they did not," and later said that their primary interest in the Hartford trust was to get the note secured. He, the attorney in the matter, did not recall that he "ever explained to them the complete distribution of the corpus of those trusts." As to the provisions in the Hartford trust that on termination corpus would go to the children Hyde testified: "The attorneys thought of that provision." Of course, that the Jenks family was not interested in conveyance to the children does not dispose of the non-financial interest the Jenks family had in the Lake Beulah summer home and a new wife not intruding therein, but that is clearly a very minor factor in this problem, affecting only that piece of property and insufficient to explain transfer of outright title thereto. Will testified with respect to that property: "* * * the feeling there on Mr. Jenks' part was not perhaps as strong as it was as to the business properties," though he, Jenks, did say decedent did not always pay his share. The Jenks' attitude does not explain outright conveyance of the Lake Beulah property to the children.

The above has not considered the conveyance of the Michigan Avenue property (not directly involved, because admittedly the property is within gross estate). But it we find of little weight or importance on this question, for two reasons: First, it was of very little money interest to the Jenks family, who are argued to be the prime movers

here, since it could only produce, for the satisfaction of the note to Mrs. Jenks, whatever part of \$1,000 a year the Hartford Building did not produce. (In fact, the Hartford Building produced the \$1,000 per year, and had, during 1938, produced, prior to the transfers, \$903.75 in cash for Mrs. Jenks, though for several earlier years it had produced after payment of expenses, taxes, and mortgage interest, no net income.) Second, though the Michigan Avenue property was covered by a mortgage-secured bond for \$75,000 to assure delivery of title under an option, upon which bond Mrs. Jenks was liable, nevertheless the trust set up covering that property was wholly modifiable and revocable, was in fact later modified by the decedent. Therefore, such a trust gave Mrs. Jenks no real or substantial assurance of protection on the bond. Again, moreover, conveyance of the corpus of the trust to decedent's children upon termination of the trust is seen to be unnecessary to protection of Mrs. Jenks and, therefore, her protection does not appear as the real or dominant reason for the transfer to the children. That the parties hoped the decedent would not revoke the trust is a frail reed upon which to support the idea that the transfer would protect Mrs. Jenks. Its frailty is demonstrated by the fact that he modified the trust in 1940. By complete revocation Mrs. Jenks would have been left as she was before the transfer in trust. Considering the relative unimportance of the provisions for protection of Mrs. Jenks, compared

with the values transferred to the children, the fact that they were the natural objects of decedent's bounty, and were unprovided for in his will later made in October 1939, together with the fact that the record does not disclose the decedent's intentions as to his children, we find it impossible to conclude that the dominant motive of decedent in this matter was the wish to placate the Jenks family and marry with harmony in the family. The children, or all but one, were, on the record, satisfied in any event that he marry.

Not only is there dearth of evidence to support the petitioner's theory, but there is no small indication to the contrary, that is, that there was contemplation of death. The test is not consciousness of imminent death. "It is contemplation of death, not necessarily of imminent death, to which the statute refers." *United States v. Wells*, 283 U.S. 102; *Iglehart v. Commissioner*, 77 Fed. (2d) 704. Therefore, the fact that decedent was in good mental and physical condition for about five years after the transfers does not control. But in considering these transfers on September 17, 1938, we may not reasonably disregard the contents of the ante-nuptial agreement of September 19th. drawn in connection with the transfers and presented to him on the same date. The evidence is that on September 17th decedent was given the ante-nuptial agreement to take to Miss O'Neil over the week-end, that it recited the transfers as well as what property he had remaining, that therein he agreed to provide

by inter vivos trust, will or otherwise, from the income from the Michigan Avenue property, \$1,500 a year for the life of his wife commencing with his death if she is living at the time of his death and she, repeatedly referred to as his "wife, or widow" waived dower and homestead rights in his property and authorizes him during life or, at his death, his heirs to encumber or convey such property. To fail to see in such language, in such close connection with the transfers, indication of contemplation of death in the transfers, though not necessarily imminent demise, would be blindness to reality and to disregard an integral part of the whole plan. In our view, the protection of Mrs. Jenks on the note is given too much importance by the petitioner. We are not convinced that it is shown to be the dominant motive of the decedent. Without further discussion, we conclude and hold that the petitioner has failed to show that the transfers of the Hartford and Lake Beulah properties were not, as determined by the Commissioner, in contemplation of death within the meaning of section 811(c) of the Internal Revenue Code.

Because of stipulation as to deductions of additional administration expense,

Decision will be entered under Rule 50.

Enter:

Entered Jan. 25, 1949.

Seal

Received T.C.U.S. Jan. 13, 1949.

Served Jan. 25, 1949.

[Title of Tax Court and Cause.]

ORDER

Because of inadvertent error in stating the caption of this cause as it appeared in the petition, and prior to the order amending same on October 20, 1947, it is

Ordered: That the Memorandum Findings of Fact and Opinion entered January 25, 1949, be amended, as to the caption thereof only, to read as follows:

ESTATE OF EDWIN F. GILLETE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

[Seal] /s/ R. L. DISNEY,
Judge.

Dated: Washington, D.C. January 25, 1949.

Served Jan. 26, 1949.

[Title of Tax Court and Cause.]

ORDER

It appearing from the record in this cause that although the deficiency notice issued from the office of Internal Revenue service in Chicago, Illinois,

the estate tax return was filed with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, and that, therefore, the recitation in the Memorandum Findings of Fact and Opinion entered herein on January 25, 1949, is in that respect inadvertently erroneous, it is

Ordered: That the Memorandum Findings of Fact and Opinion herein be and the same is hereby corrected and modified to recite on page 14 (of the mimeographed copy) "Collector for the Sixth District of California at Los Angeles, California" instead of "collector at Chicago."

[Seal] /s/ R. L. DISNEY,
Judge.

Dated: February 10, 1949 Washington, D.C.

Served Feb. 11, 1949.

[Title of Tax Court and Cause.]

RESPONDENT'S COMPUTATION FOR
ENTRY OF DECISION

The attached proposed computation is submitted on behalf of respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision herein by the Court, pursuant to the statutes in such cases made and provided.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

JOHN D. KILEY,
Division Counsel.
HAROLD H. HART,
Special Attorney, Bureau of
Internal Revenue.

STATEMENT

C-TS:CD

AP:JOA

In re: Estate of Edwin F. Gillette
 Mrs. Harriette O'Neil Gillette,
 Executrix
 233 South San Marino Avenue
 Pasadena, California

Docket No. 15623

Date of Death: December 10, 1943

Estate Tax Liability

Tax Liability	Tax Assessed	Deficiency
\$82,997.50	\$45,064.39	\$37,933.11

The adjustments shown in the attached schedules have been made in accordance with the memorandum opinion of The Tax Court entered January 25, 1949, Stipulation of Facts and Staff Memorandum dated March 31, 1949, for decision under Rule 50.

Estate of Edwin F. Gillette Date of Death: December 10, 1943

Schedule 1

Net Estate

Net estate as shown in the deficiency

notice dated June 20, 1947.....	\$283,645.32	\$323,645.32
Net estate adjusted.....	275,145.34	315,145.34
Adjustment	\$ 8,499.98	\$ 8,499.98
Deductions:		
(a) Attorneys' fees	\$8,250.00	
(b) Miscellaneous expenses..	249.98	
Total adjustment		\$ 8,499.98

Schedule 2

Explanation of Adjustments

(a) An additional deduction for attorneys' fees has been allowed as follows:

Attorneys' Fees (Tax Court Trial).....	\$ 5,750.00
Attorneys' Fees (For appeal of case).....	2,500.00
Total	\$ 8,250.00

(b) An additional deduction for miscellaneous administration expenses has been allowed in the amount of \$249.98.

Schedule 3
Computation of Tax

Net estate for basic tax, Schedule 1.....	\$275,145.34
Net estate for additional tax, Schedule 1.....	315,145.34
Basic Tax:	
Tax on \$250,000.00.....	\$ 6,500.00
Tax on \$25,145.34 at 4%.....	1,005.81
	<hr/>
Gross basic tax.....	\$ 7,505.81
Less: Credit for State inheritance tax paid	2,863.15
	<hr/>
Gross basic tax less credit for State inheritance tax.....	\$ 4,642.66
Less: Credit for gift tax as shown in deficiency notice	685.86
	<hr/>
Net basic tax.....	\$ 3,956.80
Additional Tax:	
Tax on \$250,000.00.....	\$65,700.00
Tax on \$65,145.34 at 32%.....	20,846.51
	<hr/>
Gross basic and additional taxes.....	\$86,546.51
Less: Gross basic tax.....	7,505.81
	<hr/>
Gross additional tax.....	\$79,040.70
Less: Gift tax credit.....	none
	<hr/>
Net additional tax.....	\$ 79,040.70
Total Tax	\$ 82,997.50
Tax assessed: April 1945, page 100, line 5.....	45,064.39
	<hr/>
Deficiency	\$ 37,933.11

Received and Filed T.C.U.S. April 6, 1949.

[Title of Tax Court and Cause.]

NOTICE UNDER RULE 50

Take Notice that the Respondent in the above-entitled proceeding filed with the Court on April 6, 1949 a computation and notice, a copy of which is inclosed. This proceeding will be called for hearing upon such computation at 9:30 a.m. on April 27, 1949 before a Division of the Court at its Washington Office, Constitution Avenue at 12th Street, Northwest, unless, prior to that date, your written acquiescence to the entry of a decision based on such computation shall have been filed with the Court.

No further notice of said hearing will be sent.

VICTOR S. MERSCH,
Clerk.

To: E. H. McDermott, Esq.
111 West Monroe St.
Chicago 3, Ill.

[Title of Tax Court and Cause.]

The computation of the respondent filed with the Court on April 6, 1949 has been examined and found to be in accordance with the determination of the Court as set forth in its report. Petitioner therefore joins with the respondent in praying that the Court enter its decision based upon such computation, reserving however the right to contest the correctness of such decision in the appellate courts as provided by statute.

/s/ DANIEL A. TAYLOR,
135 South LaSalle Street,
Chicago 3, Illinois.

Received and filed T.C.U.S. Apr. 26, 1949.

The Tax Court of the United States
Washington

Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Findings of Fact and Opinion of this Court, entered on January 25, 1949, the respondent, on April 6, 1949, filed computation for entry of decision, to which petitioner filed acquiescence on April 26, 1949. Accordingly, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$37,933.11.

[Seal] /s/ R. L. DISNEY,
Judge.

Entered Apr. 27, 1949.

Served Apr. 28, 1949.

In the United States Court of Appeals
For the Ninth Circuit

The Tax Court of the United States
Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Harriette O'Neil Gillette, Executrix of the Estate of Edwin F. Gillette, petitioner herein, by E. H. McDermott, Wm. M. Emery, and J. S. Pennell, her attorneys, hereby petitions for a review of the decision of the Tax Court of the United States entered in the above entitled proceeding on April 27, 1949, and respectfully shows:

I.

Nature of Controversy

The controversy involves the correct estate tax liability of the Estate of Edwin F. Gillette, deceased, who died on December 10, 1943, survived by his widow, the petitioner, and four children. On or about September 17, 1938, shortly prior to his marriage to petitioner on October 29, 1938, the decedent conveyed to or for the benefit of his four

children, who had been born of a prior marriage, his interest in an office building property in Chicago known as the Hartford Building and in a summer residence known as the Lake Beulah property. Respondent asserted and the Tax Court held that these transfers were made in contemplation of death and so were includible in the taxable gross estate. Petitioner contends that these properties were transferred to insure family harmony, to make possible his intended marriage, and to accomplish other purposes associated with life, that the transfers were not made in contemplation of death, and are not taxable.

The Tax Court determined an estate tax deficiency in the amount of \$37,933.11. Petitioner contends that there was no deficiency in estate tax, but that there was instead an overpayment thereof of at least \$1,275.76.

II.

Jurisdiction and Venue

Petitioner seeks a review by the United States Court of Appeals for the Ninth Circuit of the decision and the findings of fact and conclusions of law of the Tax Court of the United States, by virtue of the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The final decision of the Tax Court of the United States was entered on April 27, 1949. Petitioner is an individual residing at 233 South San Marino Avenue, Pasadena, California, and is the duly qual-

ified and acting executrix of the Estate of Edwin F. Gillette, whose residence at the time of his death was at Pasadena, California.

The estate tax return for said Estate, in respect of which the aforementioned tax liability arose, was duly filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California, whose office is located at Los Angeles, Los Angeles County, California, within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, and the tax shown on said return was paid to said Collector.

Wherefor the petitioner prays that the decision of the Tax Court of the United States and its findings of fact and conclusions of law be reviewed and corrected by the United States Court of Appeals for the Ninth Circuit.

/s/ E. H. McDERMOTT

/s/ WM. M. EMERY

/s/ J. S. PENNELL

Attorneys for Petitioner.

Filed T.C.U.S. July 22, 1949.

In the United States Court of Appeals
For the Ninth Circuit

The Tax Court of the United States
Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING PETITION
FOR REVIEW

To:

Charles Oliphant, Esq.
Chief Counsel
Bureau of Internal Revenue
Washington, D.C.

Dear Sir:

You are hereby notified that the above-named petitioner did on the 18th day of July, 1949, duly mail for filing with the Clerk of the Tax Court of the United States at Washington, D.C. a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above entitled cause.

A copy of the Petition for Review is hereby served upon you.

Dated this 19th day of July, 1949.

/s/ J. S. PENNELL

Attorney for Petitioner.

Affidavit of Mailing

State of Illinois,

County of Cook—ss.

John S. Pennell, being first duly sworn under oath, says that he is one of the attorneys of record for the petitioner in the above entitled cause, that he did, on the 19th day of July, 1949, give to the Commissioner of Internal Revenue, respondent herein, notice of the filing of Petitioner's Petition for Review by placing a true copy of said Petition for Review together with a true copy of the foregoing Notice of Filing Petition for Review as filed herein in an envelope addressed to Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D.C., placing thereon sufficient United States postage stamps and by placing said stamped, addressed envelope in the United States mails by putting it in the United States mail box located in the Harris Trust Building, 111 West Monroe Street, Chicago, Illinois.

/s/ JOHN S. PENNELL

Subscribed and sworn to before me this 19th day of July, 1949.

[Seal] /s/ GERTRUDE LUDWIG,

Notary Public.

Filed T.C.U.S. July 22, 1949.

The Tax Court of the United States
Washington

Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER ENLARGING TIME

Upon motion of counsel for petitioner, it is
Ordered that the time for preparation, trans-
mission and delivery of the record sur petition for
review of the above-entitled proceeding in the
United States Court of Appeals for the Ninth
Circuit is extended to October 20, 1949.

/s/ ERNEST H. VAN FOSSAN,
Acting Presiding Judge.

m b w

Dated: Washington, D.C. August 22, 1949.

Served Aug. 24, 1949.

In the United States Court of Appeals
for the Ninth Circuit

The Tax Court of the United States,
Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS TO BE
RELIED UPON

Harriette O'Neil Gillette, Executrix of the Estate of Edwin F. Gillette, by her attorneys, E. H. McDermott, Wm. M. Emery, and J. S. Pennell, hereby states that she intends to rely upon the following points in this proceeding:

That the Tax Court of the United States erred:

1. In holding and deciding that transfers of his interest in property known as the Hartford Building in Chicago, Illinois, and the Lake Beulah property at Lake Beulah, Wisconsin, made by decedent on September 17, 1938, were made in contemplation of death.

2. In failing to hold and decide that said transfers of property made by decedent on September 17, 1938, were not made in contemplation of death

but were motivated by other considerations associated with continued life.

3. In disregarding substantial and uncontroverted evidence that decedent did not contemplate death in 1938 and that the transfers of property made by him in that year were prompted solely by financial considerations and the desire to be married with the approval of his entire family and by other considerations associated with continued life and not death.

4. In holding and deciding that petitioner failed to overcome the presumption of correctness attaching to the Commissioner's determination.

5. In failing to hold and decide that the presumption of correctness attaching to the Commissioner's determination disappeared upon the introduction of evidence tending to prove that the transfers were not in contemplation of death.

6. In that its decision is contrary to law, is clearly erroneous, and is not supported by substantial evidence.

7. In ordering and deciding that there is a deficiency in estate tax of \$37,933.11.

8. In failing to order and decide that there was an overpayment of estate tax of at least \$1,275.76.

/s/ JOHN S. PENNELL,

Attorney for Petitioner.

Service of a copy of the within Statement of

Points to Be Relied Upon is hereby acknowledged this 31st day of August, 1949.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Received and Filed T.C.U.S., Sept. 16, 1949.

[Title of Court of Appeals and Cause.]

NARRATIVE STATEMENT OF EVIDENCE

This cause came on for hearing at Chicago, Illinois, before the Honorable R. L. Disney, Judge of The Tax Court of the United States, on June 10, 1948. Daniel A. Taylor, Esq., appeared for petitioner, and Harold H. Hart, Esq., appeared for respondent.

After opening statements of counsel, in the course of which counsel for both parties stated that the only issue for decision was one of contemplation of death, the following proceedings occurred, all witnesses having been duly sworn prior to giving testimony:

A written stipulation of certain facts together with four exhibits attached thereto were received in evidence.

Evidence for Petitioner

MRS. DELPHINE JENKS

subpoenaed by respondent, testified as a witness for petitioner as follows:

Direct Examination

By Mr. Taylor:

My name is Delphine May Gillette Jenks. I am 81 years old and I live at 10 East Schiller Street, Chicago, Illinois. I am the widow of William Shipley Jenks, who died in either 1941 or 1943, I don't remember. My brother, Edwin F. Gillette, died in 1943, I guess, my husband in 1941. I guess that was it.

I do not remember the date or year when my brother got married. I think I objected to his marriage for business reasons, for financial reasons only. He had some debts owing to me and didn't pay the interest on the debts very regularly. He was of artistic temperament, not very much of a business man, and we thought he could hardly afford to get married under the circumstances.

I talked to my husband about my brother's marriage, but I do not recall talking to my nephew, Hyde Gillette, about it. My husband always handled my business and financial affairs. I couldn't say whether he talked to Hyde Gillette about my brother's marriage but I suppose he would have been more apt to do so.

I had forgotten that Edwin F. Gillette had trans-

(Testimony of Mrs. Delphine Jenks.)

ferred his interest in the Lake Beulah summer home but I believe he had. When I learned of my brother's contemplated marriage I had no feeling about a new wife occupying the summer home. [2*]

Cross-Examination

By Mr. Hart:

I don't know how much the note was that was outstanding in 1938 when my brother Edwin was about to be married. I don't know when that note was first issued. I think some interest payments were made.

I remember I had a half interest with my brother in a business building in the loop, the Hartford Building, Madison Street. There was another building, our family residence, 306 Michigan Avenue. Later a taxpayer was built, no big building.

I transferred something in the Hartford Building to Hyde Gillette, trustee, I guess. I don't know. I don't remember when or how. I did not transfer the property on Michigan Avenue, that stayed the way it was. I have not transferred the Lake Beulah property; I still hold that, half of it. I transferred some Hartford, that was transferred to Hyde Gillette, trustee, I suppose.

Hyde Gillette handles my business affairs now. I don't know when he started that. I don't know dates at all. It was after my husband died, I think. Hyde Gillette—Glore, Forgan & Co., prepares my income tax returns, I suppose.

*Folios appearing at foot of Original Narrative Statement of Evidence.

MRS. MARIETTA GILLETTE WILL

a witness for petitioner, testified as follows:

Direct Examination

By Mr. Taylor:

I am 36 years of age, a daughter of Edwin F. Gillette, and the wife of Howard A. Will, whom I married in 1937. I live [3] in Winnetka, Illinois, and have lived in and about Chicago since my marriage. Prior to that time I lived with my father, my sister Helen and my brother Edwin in Pasadena, California. My brother Hyde left the home in Pasadena in about 1925. We had lived in Pasadena since 1917. My mother died in 1932 and thereafter our family in Pasadena consisted of my father, my sister Helen, my brother Edwin and myself. Hyde was either living in Chicago or away at school. Helen lived with us in Pasadena until 1935.

Prior to my mother's death she handled the finances of our family as far back as I can remember. After her death I handled the greater part of them. My father's chief source of income was from two leases in Chicago. These leases were on a Michigan Avenue property and property under the present Hartford Building.

I never knew how much my father's income was prior to 1930. My father never discussed his financial affairs with me. He didn't take much interest in business affairs. As long as the checks kept com-

(Testimony of Mrs. Marietta Gillette Will.)

ing in he never worried about where they came from or what was behind it.

My father was never engaged in any business as far back as I can remember. He belonged to numerous organizations and clubs. He was interested in drawing. He composed poetry in French and English. I believe he wrote a play. He had a work shop. He did beautiful cabinet work. He belonged to the Cauldron Club and the Cauldron Singers which was a branch of it. He was a member of the Athletic Club in Pasadena. He [4] designed covers for his fraternity magazine. He had his own car. He drove it a great deal. Whenever a group of people were going anywhere, it was usually he that took them. A very expert driver. He continued in these activities up until the time of my marriage. Generally speaking, he devoted his whole day to them.

Petitioner's Exhibit 5, admitted in evidence, is a design made by my father.

After my marriage and removal to Chicago in 1937 I saw my father once or twice every year. When I saw him he continued his interest in the activities I have outlined. When we visited in Pasadena we would stay a week or two, and his days were always very much the same as they were when I lived there permanently. I saw him in Chicago after I was married. I saw him at Lake Beulah in 1938, 1939 and 1940. He was very active on these occasions. He used to go swimming every day. He was interested in boating but didn't do a great deal of it at that time.

(Testimony of Mrs. Marietta Gillette Will.)

To my knowledge my father never had a serious illness prior to his last illness. If he had had a serious illness I would undoubtedly have known about it. I don't ever remember a physician making a professional call on him. I do know that he went down to a physician's office once in a while for a minor ailment or for a checkup. He had a very pleasant disposition. He was very much interested in what everyone did around him and what his children did. That disposition continued up throughout the last time I saw him. I first learned of the [5] illness which caused his death on the day he died.

In May, 1938, I learned of my father's contemplated remarriage. We received a letter from him about it. I was very pleased about it. I had met Miss O'Neil in Pasadena. I had no objections at all to his remarriage, and wrote to him to indicate my attitude. I talked to him about it that summer at Lake Beulah and again told him how pleased I was. He was at Lake Beulah the whole month of August that summer and in Chicago in the early part of September. Prior to the time I saw my father in 1938 I discussed his contemplated remarriage with my husband.

I did not discuss it with Mr. and Mrs. Jenks, but I was present and heard what they had to say about it. They seemed very much opposed to it. They said he couldn't afford to get married. I did not at that time discuss with Hyde or my husband the transfer into trust of any of my father's property.

(Testimony of Mrs. Marietta Gillette Will.)

I knew some transfers were being discussed that summer. I knew that transfers were eventually made. I was not familiar with the details.

Cross-Examination

By Mr. Hart:

My brother Edwin is two and one-half years older and my sister Helen is a year older than I am. In 1935 Edwin, Helen and I were living in Pasadena. I first met Mrs. Harriette O'Neil Gillette in 1931 at a large party given by my aunt, Mrs. Jenks. Mrs. Jenks knew her before that. I believe they belonged to the same French group. I don't remember seeing her [6] again until a great many years afterwards. I was pleased when I heard that my father contemplated marrying her. She had made a nice impression on me at the time I met her.

The Lake Beulah property is about 18 miles northeast of Lake Geneva, about thirty miles southwest of Milwaukee. It has five and a half to six acres, mostly wildland, with a house, a barn and a little boathouse. My father and his family and Mr. and Mrs. Jenks would occupy it jointly during the summer. My relationship with Mr. and Mrs. Jenks was always very close. She was fond of all her brother's children. That relationship continued past 1938 and is still continuing today.

Prior to my father's remarriage I was present when Mr. and Mrs. Jenks made remarks opposing this remarriage. This was not at a family confer-

(Testimony of Mrs. Marietta Gillette Will.)

ence. Sharing the same house at Lake Beulah different members of the family are naturally in the living room at the same time. I heard the same remarks at their Schiller Street apartment in Chicago. They would bring up the subject and tell me they didn't see how he could possibly marry, that he didn't have enough money, something about a debt they owed him. I didn't take that in very thoroughly at that time. I didn't know the amount of the debt or the circumstances.

Redirect Examination

By Mr. Taylor:

When I mentioned "debt they owed him" I meant a debt he owed them.

At the time I received the letter from my father in [7] 1938 announcing his intention to remarry he was living with my brother Edwin. My sister Helen was living in Chicago.

Recross-Examination

By Mr. Hart:

I was married in 1937. I had known my husband, Mr. Will, for three months prior to our marriage.

MRS. ANNA J. WYNNE.

a witness for petitioner, testified as follows:

Direct Examination

By Mr. Taylor:

I am a widow, 59 years old. I am employed by

(Testimony of Mrs. Anna J. Wynne.)

the Globe Coal Company, 322 South Michigan, doing general office work.

I was in the office with Edwin F. Gillette for many years. This was the office of the estate of Edwin L. Gillette. That office was occupied by Edwin F. Gillette, his brother-in-law William S. Jenks, and an attorney, George B. Holmes. I did stenographic work and a little bookkeeping in connection with the Fernwood property that was being sold on payments and I had the record of that. That was the Gillette estate. The Gillette estate's other affairs was the collection of rents and leaseholds. At that time that was from the ground under the Hartford Building. They latter had another one.

I was employed in that office about 14 or 15 years. I am not positive in which year I went there, it was in 1906 or 1907. I know I was there in 1907. I think I left there in 1920. Mr. Gillette was still associated with the office when I left but he wasn't present. He was living in California. I [8] think he moved to California about 1917. Before Mr. Gillette left, Mr. William S. Jenks really had the most to do with the estate it seemed. When there were any papers to be signed in connection with the estate, of course Mr. Gillette did that, but Mr. Jenks seemed to take the lead in the business end of it.

When I first went there Mr. Gillette was working in an architect's office. The architect was Howard Van Dorn Shaw. Mr. Gillette was with Mr. Shaw for about two years after I came there. He spent

(Testimony of Mrs. Anna J. Wynne.)

part time over there and part time in his own office. I understand that he had the position with Mr. Shaw just for experience. In general he was doing drafting and detail work in that office. After he left Mr. Shaw he continued the architect business for himself associated with Mark Levings. I don't think that lasted more than about two or three years. I was in the office from which that business was conducted. It wouldn't be very easy to say how much time Mr. Gillette devoted to the architect business because he had other little interests that would creep in, too. He was interested in fraternal matters, fraternities and clubs and things like that took a lot of time. There were a couple of clubs at Lake Beulah that he had some connection with, as officer. I don't remember his title — Secretary-Treasurer. They had a yacht club where they had other titles, Commodore or something, and he had something to do with the collection of dues and sending out notices for their different affairs. The yacht club would have their sailing races, and then there [9] was a country club up there, Lake Beulah Country Club. He spent quite a lot of time with their affairs in the summertime when they would have their tennis tournaments and their golf tournaments and things like that.

While I was there Mr. Gillette was editor for a while of the fraternity publication of Tau Beta Pi. We did a good deal of the work ourselves in the office for that magazine and he designed the cover

(Testimony of Mrs. Anna J. Wynne.)

for it and he wrote words and music for their song. He would get in touch with the different fraternity members to get articles for the magazine. It was an engineering honorary fraternity.

He was active in another fraternity, Theta Xi. They would have luncheons once a week and he was very much interested in calling up the different ones to attend the luncheon on the regular day.

The only building that I recall that he served as architect for was an 18 apartment building at 67th and Paxton on the South Side. Then there was an alteration job on North State Street, remodeling interior and exterior. Then, of course, he designed his own house at Lake Beulah. They moved the old house over on the lake front for a boathouse and he designed a new one.

I wouldn't say that he made anything out of the architectural business. I know he had to dig into his own funds for running the office.

At first the rental checks from the Hartford Building came to the estate of Edwin L. Gillette. Later that was [10] changed so that Edwin F. Gillette received one check and Delphine Gillette Jenke the other, each for half of the rental payment. Later on the check for Edwin F. Gillette, instead of being made to him, was made to his wife, Mabel Hyde Gillette.

These checks were turned over to his wife to handle because he had become indebted and needed some assistance to clear his debts and he needed the

(Testimony of Mrs. Anna J. Wynne.)

signature of his wife on some papers. She refused to sign anything without consulting the Jenks. Then when the Jenks came in on it they wouldn't sign anything to clear him until he would agree to have his wife take care of the finances. I know about this because Mrs. Gillette came into the office. I don't know what it was that was to be signed; but she just wouldn't sign it and then she told me later that she was sorry that she didn't know that he was getting himself into debt. She said, "If you ever know of anything again would you please tell me about it"?

I heard Mr. Jenks say that he did not like the architectural business that Mr. Gillette was engaged in. It was just like throwing money away and I know he did not approve of it. It was something Mr. Jenks did not think Mr. Gillette could afford to do. It was sort of more like a hobby for him and it was a rather expensive one.

There was a Mr. Dodson who came into the office. I don't know just what he was but I would say he was a promoter and he got Mr. Gillette interested in something that he signed some notes. There were notes that would become due at the bank and Mr. Gillette wasn't able to take care of them. Of [11] course, the bank was pressing for them and I went over to Mr. Dodson's office one day and told him about it and he said, "Well, don't you worry about it. I will get you some cash." Mr. Gillette was away so I went to his office and he gave me I think it was \$1,000 which I carried across the street to the bank

(Testimony of Mrs. Anna J. Wynne.)

to pay something on a note. Mr. Jenks did not know about this transaction until Mrs. Gillette was brought in and she talked to him about it. That is the occasion which brought to a head this transferring of Edwin F. Gillette's funds to Mabel Hyde Gillette. Mr. Jenks would remark sometimes to me that Mr. Gillette wasn't handling things just right.

Cross-Examination

By Mr. Hart:

I started to work for the Edwin L. Gillette estate in 1906. Edwin L. Gillette was the father of Edwin F. and Mrs. Jenks. I was there about 14 or 15 years, I think. I left about 1920, I would say. Everything I have related here deals with the period prior to 1920.

I don't really know how old Mr. Jenks was. I don't remember whether he was older or younger than Mr. Gillette. I know there was a difference in age there but I don't really recall. I would think though that he was probably a little older. I didn't know at that time how old Mr. Gillette was.

Mr. Jenks wasn't really in any business, just looking after his wife's interest in the estate. He looked after the collection of rents on the Hartford Building ground and a piece of property on Michigan Avenue. I don't know whether the [12] Michigan Avenue property was under lease. That wasn't under lease when I first went there. That lease was made after I came there. I don't remember what

(Testimony of Mrs. Anna J. Wynne.)

year. They made a 198-year lease on the ground. The Hartford Building lease was made long before my time. That was about 1892. There wasn't much business in collecting those rents. Mr. Jenks came down to the office every day and stayed for two or three hours. He took care of some correspondence.

The income from the Hartford Building lease was \$27,000 a year. When the Michigan Avenue building was first leased, I think the income from it was \$10,000 and then a few years later it was raised to \$12,000. That rent would be split two ways, between the Jenks family and the Gillette family.

Mr. Jenks at one time was Treasurer, I think, of the Fairbanks Company a few years back.

Redirect Examination

By Mr. Taylor:

Fernwood is a subdivision, a part of Chicago, on the South Side. They had lots and houses which were being sold on installment. That was part of the Gillette estate. George B. Holmes, an attorney in the office, had charge of that at first when I first came there.

Recross-Examination

By Mr. Hart:

This Mr. Holmes is now dead. I don't know when he died, 4, 5, 6 years ago. Something like that.

MRS. HARRIETTE O'NEIL GILLETTE
petitioner, testified as follows: [13]

Direct Examination

By Mr. Taylor:

I am the widow of the late Edwin F. Gillette and executrix of his estate. Mr. Gillette and I were married in Yuma, Arizona, October 29, 1938. I continued to live with him as husband and wife until his death. Prior to my marriage I was employed as a French teacher.

I had known Mr. Gillette since 1931. During the period of two or three years before the marriage I saw him at least four times a week. We were both members of two French societies. One was the Alliance Fraincaise which is all over the United States and the other was a small French group, a group of members who were interested in French. The small group was called the Demi-Cercle. Mr. Gillette was a very interested student of French. He had been interested ever since his childhood. He often read a lecture in French to this larger group, the Alliance Francaise, that he had written himself, and he translated plays and poetry of all kinds and composed words for songs in French. He translated one whole book of poems, the Rubaiyat of Omar Khayyam into French and studied French all the time. He also spoke German and Italian.

He was also active in a men's glee club called the Cauldron Club which was a group of civic-minded men, and he belonged to two fraternities, Theta Xi,

(Testimony of Mrs. Harriette O'Neil Gillette.)

and Tau Beta Pi which was an honorary. After we were married he devoted much time to the fraternity work. He continued for some time to design the covers weekly for the Theta Xi and he had always attended the Tau Beta Pi, the group meeting when they initiated the new [14] members for the society. He wrote the ritual they used for that. During the time I was married to him I should say he devoted half of his time to those activities. We also motored a great deal. We motored all over Southern California and used to motor in one day up to San Francisco which is 450 miles. He did all the driving. If we went on picnics with our French group it was always Mr. Gillette who took half the group.

He owned some land near Estes Park in Colorado. There was a great many acres. I don't know how large but there was a house, a mountain cabin, a two-story house, that he was always interested in fixing when it needed fixing. He built all the trails or a great many of the trails around the house and sawed large limbs and things. That was at an altitude of 9,000 feet. He did that subsequent to our marriage. In 1939 I wasn't with him. In 1940 we were there for some time and he did that.

He continued his activities in the French groups and singing groups up until the time of his last illness. About a week or ten days before he died he sang a two-hour concert standing with his glee club and he had driven into Los Angeles to a Theta Xi luncheon within that week or ten days.

(Testimony of Mrs. Harriette O'Neil Gillette.)

Mr. Gillette had a very happy disposition and he enjoyed fun and books and he was exceedingly interested in people. He was a very kind person.

During the period I was married to him he had no illnesses except one or two colds prior to his final illness. He [15] was never attended professionally by a physician prior to his last illness. Though he didn't want me to I called a doctor the morning he died. For two or three weeks prior to the date of his death he had complained of not feeling exactly as usual. He stayed in bed two days before his death feeling not just himself. He was first attended by the physician on the date of his death. At that time the physician told me that his kidneys weren't functioning correctly and for him to keep warm and stay in bed. That was all the physician told me. That was about 10 o'clock in the morning and he died about 2 that day.

(Petitioner's Exhibit 6, certified copy of death certificate, was received in evidence.)

Interjection by Mr. Hart

Mr. Hart: I might say at this time to Your Honor that a lot of the testimony that has been put in—the Government doesn't make much point of the health situation in this case. Mr. Gillette, as far as we know, considering his age at the time this transfer was made, was healthy according to that age.

The Court: You mean that you are satisfied that no further evidence need be put on as to his condition of health?

(Testimony of Mrs. Harriette O'Neil Gillette.)

Mr. Hart: That is right.

The Court: I am not pressing you to do that, you understand, but you have made an indication, and if that is what you mean, we don't need to take any further [16] time on it. It is up to you, of course.

Mr. Hart: Well, I will take that responsibility.

The witness continued as follows:

Mr. Gillette at the time of his death was 81 years and two months.

Prior to the marriage I had met Edwin and Helen and Marietta and Hyde. I had also met Mr. and Mrs. Jenks. I first met them in Pasadena. The first time I met Hyde Gillette was at the University Club in Chicago on June 23, 1938. I was in Chicago at that time just long enough for luncheon and to take the train that evening for the East. I next returned to Chicago in early September on my way back to California and stopped to visit some friends in Kenilworth, Illinois.

Prior to the time I came to Chicago in June 1938, Mr. Gillette and I discussed the subject of the attitude of the members of his family to the marriage. He told me that his own children were pleased with the idea but that Mr. and Mrs. Jenks were not pleased. I was not concerned about that. I didn't know there was any reason to be concerned. Mr. Gillette indicated that the reason Mr. and Mrs. Jenks had some objections to the marriage was that he owed them quite a large sum of money,

(Testimony of Mrs. Harriette O'Neil Gillette.)

a debt contracted, but no mention was made of the sum or how the debt was contracted or anything of that kind.

Prior to the time I came East I did not know the source or extent of Mr. Gillette's income. I knew he owned his home in Pasadena and I heard him speak of Lake Beulah, because [17] he had gone there nearly every summer. Nothing had been said to me by him prior to the time I came to Chicago in June 1938 about a prenuptial agreement. Mr. Gillette suggested that I meet Hyde on my way East because I was anxious to have met all of his family before we decided, before we married. The time I met Hyde I spent just luncheon with him, maybe an hour and a half. He said that he was pleased that the marriage was to take place. He seemed very friendly about it. He told me that Mr. and Mrs. Jenks weren't pleased about the idea of the marriage from a financial point of view. He mentioned the debt or a large debt and said that the Jenks felt that his father couldn't take on any extra expenses. He said that possibly his father and I wouldn't be interested in coming to Lake Beulah as regularly and that the upkeep of the place was quite a burden and that some arrangement could be arrived at that we could just go up as guests once in a while. I told him that I would prefer to have it that way rather than continue the upkeep, continue to have joint ownership and have two families run one establishment.

(Testimony of Mrs. Harriette O'Neil Gillette.)

I wasn't concerned about the attitude of Mr. and Mrs. Jenks because I thought that possibly some arrangement could be worked out whereby they would be satisfied. It seemed better for someone to try to find a way of taking the objection, from a financial point of view, out of the picture. I had no desire to interfere in any way with any financial arrangement Mr. Gillette had with the Jenks.

The subject of an antenuptial agreement was not mentioned at that first meeting with Hyde Gillette. The subject was first mentioned to me by Mr. Gillette when he came to Kenilworth, Illinois to spend a week-end when I was visiting there. That was the 17th and 18th of September, 1938. I did not discuss the subject of an antenuptial agreement with him on that occasion. He told me that Hyde and Mr. Will were writing up some papers to that effect. We didn't discuss the agreement at all. The antenuptial agreement was signed by me and Mr. Gillette in Hyde's office. Mr. Gillette, Hyde and Mr. Will were present. I had no objections whatever to signing it. At that time Mr. Will suggested that I ought to have a lawyer to look over the papers in my interest. I didn't obtain one because I didn't feel that it was necessary. The papers which I signed and which, of course, I read and which were explained to me before I signed them mentioned that the Hartford Building and the Michigan Avenue property had been transferred to Hyde Gillette as trustee. I did not discuss any

(Testimony of Mrs. Harriette O'Neil Gillette.)

of these transfers with Mr. Gillette prior to the week-end he showed me the proposed antenuptial agreement. When I read the papers at the office I realized that Mr. Gillette's one-half interest in the Hartford Building and the Michigan Avenue property had been transferred to Hyde Gillette in trust and that his one-half interest in the Lake Beulah summer home had been transferred to the Gillette children.

Cross-Examination

By Mr. Hart:

I first met Mr. Will that day in Hyde's office in September, 1938. I first met my husband in 1931. From that time I always saw him at our French meeting which was every Friday afternoon during eight months of every year. He proposed marriage to me on April 6, 1938. We did not discuss business matters then. He and I never discussed business matters. He never definitely discussed the debt due Mrs. Jenks. But just before I came East he seemed upset one day and when I asked him what it was he said his sister was annoyed at the idea of his marriage when he wrote the family that he was hoping to get married. That was either in late May or very early June 1938 before I left to come East. At that time I believe he told me that the debt was one of long standing. I believe he said that he was behind on interest and that the pressure for payment came when the possibility of marriage came up.

(Testimony of Mrs. Harriette O'Neil Gillette.)

He didn't discuss the making of a will with me. I don't know who drew the will. The other day I believe I was told that he drew it himself. Of my own knowledge I didn't know that he had made a will. He didn't discuss it with me at all.

Mr. Gillette was devoted to his children. He was very fond of them. They were an exceptionally close family. I never heard of any friction between any of the children and Mr. Gillette. A long time before, several years before our marriage, I saw Mr. Jenks and Mr. Gillette together in Pasadena. I never heard them quarrel but I saw very little of them together, at a dinner party or something of that kind. Mr. [20] Gillette and Mrs. Jenks were a very devoted brother and sister. He had no other brothers or sisters living.

I did not have an attorney represent me when these antenuptial contracts were being signed. I don't believe you marry a man if you haven't confidence that he is doing things the right way and his son too. I read the antenuptial agreement before I signed it. They explained to me what property was transferred to Mr. Hyde Gillette as trustee and what the terms of the two trusts were so I could understand the reason the transfers were being made. I understood that when my husband died I was to get \$1,500 a year for life from the Michigan Avenue property. That was explained to me. I don't remember whether it was my suggestion or the suggestion of someone else that that sum be in-

(Testimony of Mrs. Harriette O'Neil Gillette.)
cluded in the trust respecting the Michigan Avenue property.

Prior to a few days before Mr. Gillette's death he wasn't seriously ill at any time.

HYDE GILLETTE

a witness for the petitioner, testified as follows:

Direct Examination

By Mr. Taylor:

I am 42 years old. I am the son and the oldest child of the deceased, Edwin F. Gillette. My brother Edwin is 39, three years younger than I. My sister Helen is 38. I live in Barrington, Illinois. I lived in Chicago from the time I was born until my family went to Pasadena in 1917. I lived in [21] Pasadena from 1917 until 1922 when I started going East to school. I returned to Chicago to make it my permanent residence when I finished school in 1930 and have lived in and around Chicago since that time except when I was in the Navy. I graduated from Princeton in 1928 and from the Harvard School of Business Administration in 1930. I am presently engaged in the investment banking business and have been in that business since the fall of 1930. In the firm in which I work I am manager of the public utility buying department. I have supervisory responsibility over the research department, which has its own manager, and I have supervisory responsibility over the investment advisory department, which also has its own manager.

(Testimony of Hyde Gillette.)

I recall nothing whatsoever of my father's business activities before he moved to California in 1917 except one visit I made to his office when I was a little boy in which he showed me his drawing boards. He was not engaged in any business after he moved to California. He established his home there in 1917. My father graduated from Rensselaer Polytechnic Institute at Troy, New York in 1885 and 20 years later graduated from Armour Institute with an engineering degree and started the practice of the profession of architecture in 1906. After my father moved to California during the period I lived with my family prior to going East to school, my father had a great many interests based primarily on the talents which he had. One was his talent for design and [22] in employing and enjoying that talent he spent a great many hours at his desk drawing cover designs for his fraternity magazine. Another talent which he had that gave him pleasure in his retirement was one for languages. He read German and he spoke it fluently and he read a great deal of French. He wrote French poetry for his own amusement and translated English verses into French. His interest in photography perhaps arose from two trips he took around the world earlier in his life on which he had taken several volumes of pictures. He was active in the Cauldron Club and its affiliate, the Cauldron Singers, and he had a membership in the Valley Hunt Club, a tennis and swimming club

(Testimony of Hyde Gillette.)

which he joined for his children's sake. He spent a great amount of time in his workshop because he was very skilled with tools and from time to time made pieces of cabinet work. He enjoyed motoring and walking. He wrote quite a few letters in connection with his fraternity affairs in which he was a very prominent member.

The Court: Mr. Taylor, I don't want to inhibit you in the slightest degree in making your case but it has become apparent some time ago that this gentleman was of a somewhat artistic nature rather than a business man; that he didn't tend to business very much; that he had an income. Now he certainly has made that impression on my mind long ago, in the absence of countervailing evidence. In the absence of evidence to contradict that, there is [23] no use in accumulating evidence along that line.

Mr. Hart: The evidence shows that this man had a large income up until 1933 and that it wasn't necessary for him to have a bread and butter job and he didn't have one.

The Court: I think the facts concerning the kind of existence he lived are already established.

Mr. Taylor: I am satisfied to let that subject drop at this point in view of that situation.

The witness continued as follows:

As far back as I can remember my mother handled the finances of our family. I remember that she was the one who signed checks that were sent to me at school beginning in 1922.

I am the Hyde Gillette named as trustee in the

(Testimony of Hyde Gillette.)

transfers of one-half interest from my father of the Hartford Building trust and the Michigan Avenue property in trust. I am still acting as trustee under those instruments. My father and Mrs. Jenks acquired their respective one-half interests in those properties by inheritance from their father in 1892.

Petitioner's Exhibit 7, the lease of the Michigan Avenue property, was admitted in evidence.

Petitioner's Exhibit 8, a photostatic copy of the lease on the Hartford Building, was admitted in evidence.

The witness resumed as follows:

The Hartford Building is located on two pieces of property one of which is owned one-half by Mr. Gillette and [24] the other half by Mrs. Jenks and the other piece of property by the Northern Trust Company as trustee for the Elizabeth A. Ware Estate. It is a fourteen-story office building of old construction located in the loop. The 99-year lease made in 1892 was not in effect at the time my father transferred his undivided one-half interest in that property to me. It had been cancelled as a result of forfeiture in 1933. The ground rent paid to my father and my aunt on the Hartford property was defaulted as of February 1, 1933 and the lease was declared forfeited. It was necessary to take the matter to the Municipal Court to obtain possession and possession was obtained on December 1, 1933. I handled the matter and consulted with Wilson & McIlvaine. After possession had been regained of

(Testimony of Hyde Gillette.)

the building I obtained a firm of building managers to operate it. I also negotiated an operating agreement with the Northern Trust Company so that the building could be operated amicably. It was also necessary to negotiate a mortgage for \$85,000 to pay off taxes which had accrued for some years through nonpayment by the lessee of those taxes. The building managers placed a manager in the building to negotiate leases, to make expenditures for upkeep and operation and to collect rents from the tenants. They rendered monthly reports to the Gillette family whom I represented. I took over the management of the Hartford Building under powers of attorney from my aunt, Mrs. Jenks, and from my father.

The following documents were identified by the witness and admitted in evidence: [25]

Petitioner's Exhibit 9 is the power of attorney from my father to which I just referred.

Petitioner's Exhibit 10 is the power of attorney which I received from Mrs. Jenks. It also runs to William S. Jenks, her husband, as well as to me.

The witness resumed as follows:

After I received the power of attorney Mr. Jenks consulted with me quite frequently at my office in regard to the management of the building. Mrs. Jenks didn't consult with me at all as she was leaving her her affairs in Mr. Jenks' hands to be handled by him and my father left the matter entirely in my hands.

The net receipts from the building after oper-

(Testimony of Hyde Gillette.)

ating expenses and charges for taxes were distributed by the building manager upon the order of the owners for the purpose of paying interest on the mortgage and attorneys' fees and the balance was retained by them as a small reserve for emergency rehabilitation of a very run-down property. From December 1, 1933 until the transfer of the Hartford Building by my father to me as trustee all checks were made out by the building manager to the estate of Edwin L. Gillette, which was merely the family banking account and which paid the interest on the mortgage and the attorneys' fees. In 1938 two checks were made payable to Mrs. Jenks and Mr. Gillette personally. The first one in January gave them each \$310 and one in August gave them each \$593, which was the only money either of them received from the Hartford Building for their personal use. [26]

Petitioner's Exhibit 11 was identified and received in evidence, the witness testified in relation thereto as follows: This exhibit dated June 2, 1948 was prepared by me from the monthly records furnished me by the building manager. It is simply a record of the distributions made by them from December 1, 1933 through the end of 1938 showing the date of each distribution and the purpose for which it was made.

The Michigan Avenue property is a piece of land with approximately a 60 feet frontage, 200 feet deep, in the 100 block on Michigan Avenue. It had

(Testimony of Hyde Gillette.)

a small two-story building on it erected by the lessees. It was owned one-half by my aunt Mrs. Jenks and one-half by my father, and was under a 198-year lease made in 1909 expiring 2007 for a term of \$12,000 a year. I first knew something about this property when I took over the management of the Hartford Building for my father and my aunt in 1933 but I became intimately acquainted with the affairs in connection with this property in the spring of 1939. At that time the Michigan Avenue property lease contained a provision that an office building should be erected on the premises by the lessee within 20 years after the lease was made, which would be in 1929. In 1928 the lessees obtained an extension of 10 years of the period during which they would have to erect an office building or until 1939. If they did not erect a building by March 1, 1939 they would have to put in escrow \$100,000 in securities. In 1931 the lessees approached my uncle, Mr. Jenks, and negotiated an agreement to purchase the property. [27]

The witness identified the following documents which were duly received in evidence, and further testified as follows:

Petitioner's Exhibit 12. This document dated January 26, 1931 is an extension agreement between my family and the Lehmann family who are the lessees of the Michigan Avenue property, extending the date when a building had to be erected under the lease until 1939 or in lieu thereof putting up \$100,000.

(Testimony of Hyde Gillette.)

Petitioner's Exhibit 13 is the option to purchase dated January 26, 1931 between my family, the owners of the Michigan Avenue property, and the Lehmann family, the then lessees. I recognize the signatures of my father, mother, aunt and uncle.

Petitioner's Exhibit 14. This document dated January 26, 1931 is a bond given by my family to the lessees of the Michigan Avenue property that they will make delivery and give good title to the Michigan Avenue property under the option to purchase if the lessees desire to exercise the option. I recognize the signatures of my father and my aunt.

Petitioner's Exhibit 15: This document also dated January 26, 1931 is the trust deed securing the bond, which has been introduced in evidence as Petitioner's Exhibit 14, made by my family to the lessees of the Michigan Avenue property, and it is signed by my father and my aunt whose signatures I recognize. [28]

On March 1, 1939 the lessees of the Michigan Avenue property advised us that they desired to exercise their option and the transactions incident to the exercise were completed within a couple of months. That involved the payment of \$150,000 to Mrs. Jenks and \$150,000 to Hyde Gillette, trustee. I participated very actively in carrying out Mrs. Jenks' and Mr. Gillette's end of that transaction, consulting with Wilson & McIlvaine, attorneys who handled the legal details. At the time my father transferred his one-half interest in the Michigan Avenue property to me in trust I had no knowledge

(Testimony of Hyde Gillette.)

that this option to purchase would be exercised.

During the 1930s my father's chief sources of income were from these two leases. Prior to 1930, from 1920 to 1930, his chief source of income was also from the two leases.

The indebtedness which I as trustee assumed under the trust instrument conveying to me my father's one-half interest in Hartford Building was a note that my father had given my aunt in the amount of \$41,650 and accrued interest on that in the amount of approximately \$4,000. This document which you hand me is the note for \$41,650, the indebtedness of which I assumed as trustee of that trust. This indebtedness was the renewal of a note dated in 1931 for \$34,000 given by my father to my aunt plus interest accrued to December 23, 1936, the date of the note for \$41,650. The second document for \$34,000 dated June 23, 1931 is the note signed by my father to my aunt as just stated. It is the origin of the \$41,650 note. [29]

This third document which you hand me I became familiar with for the first time when I assumed the indebtedness of my father to my aunt, as trustee under the Hartford trust. The signatures on it are the signatures of my father, Edwin F. Gillette, and my mother, Habel Hyde Gillette.

Petitioner's Exhibit 16, the note for \$41,650 dated December 23, 1936, was admitted in evidence.

Petitioner's Exhibit 17, the note for \$34,000 dated June 23, 1931, was admitted in evidence.



\$34,800⁰⁰ June 23, 1921-
On Demand after date we promise to pay to
the order of Delphine Gillette Jenks
Thirty-Four Thousand \$ ——— Dollars
at
Value received with interest at 5 per cent per annum since
Edwin F. Gillette
Mabel Hyde Gillette

Due

Dec. 23, 1936
Received new note
41.650. to cover
amount due to date
Delphine Gillette Jenks.

JUN 20 1921
PLTH 17



\$41,650⁰⁰ Chicago, Ill. December 23, 1936.

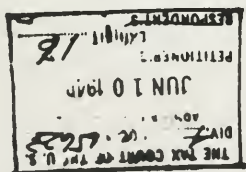
On Demand — after date I promise to pay to
the order of Delphine Gillette Jenks —
Forty One Thousand Six Hundred Fifty ⁰⁰/₁₀₀ Dollars
at

Value received with satisfaction at the rate of 5 ^{per cent} ^{per annum} ^{semi-annually}
Edmund F. Gillette

No. —

Due. —

1000 100 100



(Testimony of Hyde Gillette.)

Petitioner's Exhibit 18, a document dated June 5, 1921 signed by Edwin F. Gillette and Mabel Hyde Gillette, was admitted in evidence.

PETITIONER'S EXHIBIT NO. 18

Edwin F. Gillette
691 La Loma Road
Pasadena, California

June 5, 1921.

In consideration of my sister, Delphine Gillette Jenks, joining me in making a mortgage on the S.W. corner of Dearborn and Madison Streets, owned jointly by us, for \$70,000.00 for five years @ 5 $\frac{3}{4}$ %, I hereby declare that the proceeds of said mortgage being entirely for my personal use, I will reimburse the said Delphine G. Jenks, should she, at any time, be obliged to use any of her funds to pay either the principal of said mortgage or the interest thereon.

/s/ EDWIN F. GILLETTE.

/s/ MABEL HYDE GILLETTE.

The above agreement is hereby extended to cover renewal of said loan for five (5) years @ 5% from June 23, 1926, the conditions being unchanged.

/s/ EDWIN F. GILLETTE.

/s/ MABEL HYDE GILLETTE.

The notation on the back of Petitioner's Exhibit 17, the note for \$34,000, are interest payments made through June 23, 1932. There is also the statement that a new note for \$41,650 was received on December 23, 1936. The notations are signed by Delphine

(Testimony of Hyde Gillette.)

G. Jenks whose signature I recognize. The notations were on the document when it came into my possession. They show interest payments 7/23/1931 and June 23, 1932 of about \$850 each which is interest, I believe, at 5% on \$34,000 on a semi-annual basis. The notations are in the handwriting of my uncle and the signature is that of my aunt.

At the time my father transferred to me one-half interest in the Hartford Building in trust there was no mortgage on the building other than the \$85,000 mortgage which I negotiated. [30]

PETITIONER'S EXHIBIT 19

September 17, 1938.

Mr. Edwin F. Gillette,
Lake Beulah, Wisconsin.

Dear Mr. Gillette:

You have just conveyed to the undersigned as Trustee your undivided one-half interest in certain real estate at the Southwest Corner of Madison and Dearborn Streets, Chicago, Illinois, known as the Hartford Building, and in the trust indenture the undersigned as Trustee has assumed and agreed to pay, but only out of the assets of the trust estate, your indebtedness to your sister, Mrs. William S. Jenks. In further evidence of such assumption, the undersigned as Trustee under said indenture hereby agrees to indemnify and save you harmless from any loss resulting from any action which may be brought by Mrs. William S. Jenks or her heirs, executors, administrators or assigns to collect from you per-

(Testimony of Hyde Gillette.)

sonally the said indebtedness which the undersigned as Trustee has assumed as aforesaid or any interest thereon.

Yours very truly,

/s/ HYDE GILLETTE,

Not individually but only as Trustee under the Trust Indenture above referred to.

Filed T. C. U. S. June 10, 1948.

Petitioner's Exhibit 19 was admitted in evidence and the witness testified in respect thereof as follows. This is a letter addressed to Edwin F. Gillette dated September 17, 1938 and signed by me as trustee, stating that I would save my father harmless from any loss resulting from any action that might be brought by Mrs. Jenks or her heirs under the indebtedness which I had assumed and which he previously owed her. That is the indebtedness mentioned in the trust instrument. The language of the Hartford Building trust, Exhibit 1, refers to an indebtedness assumed by the trustee of \$40,000 whereas the note, Petitioner's Exhibit 16, is in the amount of \$41,650. The language in the trust was used because the note was in Mrs. Jenks' safety deposit box and she was at her country home at Lake Beulah when the indenture was drawn and said she would give us the exact figure as soon as she returned to Chicago.

(Testimony of Hyde Gillette.)

PETITIONER'S EXHIBIT 20

Edwin Fraser Gillette
691 La Loma Road
Pasadena, California

Mother's Day,
May 8, 1938.

Dear Hyde:

Aunt Delphine may have surmised, from my last letter, that an unusual event might occur, but this will, no doubt come to you as a most unexpected surprise to the effect that Harriette O'Neil and I are deeply in love with each other, but though having repeatedly urged her to marry me, she hesitates in our becoming engaged, from a very natural sensitiveness in coming into our long established family where there might be the slightest suggestion of being considered an interloper whose presence would not be entirely welcome to everyone.

Also, having lived as a bachelor girl, for so many years, she hesitates in giving up that freedom and independence which she has so long enjoyed, and which may be readily understood. I fear that it may require a great amount of persuasion to induce her to change her mind, in spite of our mutual fondness. Nor is she in favor of even so short a visit as a couple of days at "Narasaki", upon her return from eastern visits, about the end of September, to be "looked over", as she so aptly terms it. I suggested that such might also be an opportunity for her to do some "looking over" herself, but her only

(Testimony of Hyde Gillette.)

definite assurance was that she desired more time for a calmer consideration of the subject, and that she would give me her answer in the fall, which period I shall await as patiently as possible. I feel, in my inmost heart, that I cannot be truly happy again, alone.

In view of the conditions, I should devoutly welcome any proceeedure which might tend to overcome her diffidence in meeting the assembled members of our family when so fine an opportunity offers. Perhaps a reassuring letter from each might bring a solution.

We are merely two lovers who are seeking such happiness as may be found, at this late day, but who seem to be held back by certain conventions, as well as by the uncertainty of her welcome. Could she but find out what a really nice family is ours, after all, she might be induced to throw in her lot with us, eventually.

Harriette's birthday which we shall celebrate on the 18th of this month, when she will reach forty-one, shows an unfortunate disparity between our ages, but our spirits seem to be equally young in our ideals and future outlook, a similar background of education, an identical interest in languages, art, music, drama and literature, she being a much greater reader than I. As a matter of possible importance to some, we may each boast of equally ancient and honorable lineage, hers dating back to Kings of Ireland, than which no ancestry is much older. Her stepfather is a teacher of and lecturer

(Testimony of Hyde Gillette.)

on music, and her mother was formerly a singer in concert and opera. Curiously enough, she has the names of both of my darling little grand-daughters: Harriette and Marie.

Ted came over Saturday noon, to obtain a copy of his Birth-Certificate, in order to apply for passport, as he has been invited to go to Paris with Mr. Sturges, on a seven-weeks trip, to start as soon as Paramount will let him go, in order to write a script over there. I took the occasion to let Ted know of my hopes and ambitions, in regard to Harriette, and he showed great delight and enthusiasm, wishing me all sorts of luck and happiness, saying that I was "getting young again." So at least one member of our little family is happily "on our side." It now remains to be seen as to how all the others will take it, and I shall anxiously await their verdict. I shall not let Harriette know of my having written this letter until "the returns are all in", to obtain which I am sending an identical letter to all of your children, for your mature and individual study.

Harriette has been teaching since she was eighteen, bravely and independently, through many vicissitudes and discouragements, as did your dearest Mother, having had a solid foundation for her chosen profession through a fine education abroad, in French, in which she particularly excelled, as well as in German, Italian and Music. She has a fine sense of proportion, and fully appreciates the value of money, a useful acquirement, gained through her

(Testimony of Hyde Gillette.)

endeavors at self-support. She is blessed with an analytical mind, a keen sense of humor, a delightful personality, an innate kindness with a corresponding thoughtfulness for others, besides a deep loyalty to her friends, her pupils and her work.

She is cosmopolitan in her outlook, with a strictly modern view-point, lacking in unnecessary Mid-Victorian inhibitions, and perhaps as important as any of her other qualities, her manners are delightful. She is gracious, graceful and vivacious, has a cultivated and refined speech, aristocratic and expressive hands, a delicate mouth, short wavy brown hair, changeable hazel-blue laughing eyes, and is altogether lovely and loveable, as I see her.

My very informal and intimate pictures of her, which I inclose, are intended strictly for our family circle, as she would not have them seen by outsiders, under any circumstance. I wished you to be better acquainted with her general appearance, unstudied though it be.

This entire subject is laid before you, frankly and candidly, with the desire that it be treated in a similar manner, and with the very sincere hope that it may have your favorable consideration.

With much love to you three dear ones, and with the anticipation that our "Birthday celebration" may be the happiest possible, I am, as always,

Affectionately your

/s/ DADA.

Filed T. C. U. S. June 10, 1948.

(Testimony of Hyde Gillette.)

Petitioner's Exhibit 20 was admitted in evidence and the witness testified in respect thereof as follows. I first learned of my father's contemplated remarriage by this letter dated May 8, 1938, from him to me which I received through the mail. This letter is the first notice I received that my father contemplated remarriage. I thought that if that was what he wanted to do he should do it. I was perfectly happy to have him do it. I discussed the subject with Mr. and Mrs. Will and with Mr. and Mrs. Jenks. My brother Edwin was in Pasadena and we had no correspondence on the subject. My sister Helen was here in Chicago but I don't recall discussing it [31] with her. I may have but I don't recall specifically. My sister Marietta expressed to me that she thought the marriage was a very fine idea. As I recall I received no expression of my sister Helen's feeling in regard to the matter.

Mr. and Mrs. Jenks seemed quite unhappy at the idea of the marriage because they didn't see how my father could afford to take that step. They pointed out that he was receiving only \$6,000 from his interest in the Michigan Avenue property, that they had not received any interest on the note he had given my aunt and they didn't feel that he should take on any additional obligations. They didn't seem to show much regard for his feeling in the matter but simply stated that they thought it was a rather foolhardy thing for him to do and that it would involve additional expenses. Mr. Jenks in particular pointed out that if it did involve addi-

(Testimony of Hyde Gillette.)

tional expenses my father might possibly encumber my aunt's interest in the Hartford Building as well as in the Michigan Avenue property in attempting to finance his additional expenses.

The first discussion I had with Mr. and Mrs. Jenks about my father's remarriage was sometime in May at their apartment at 10 East Schiller Street. Nothing was mentioned at this time about transferring the Hartford Building into trust or otherwise. Nothing whatsoever was mentioned about the disposition of any property which my father owned. I only listened to their objections to the marriage. I can't tell exactly how often I discussed the subject with Mr. and Mrs. [32] Jenks during the summer of 1938 but I recall discussing the matter several times with Mr. Jenks. Once or twice at least in Chicago before he went to the country and on week-ends when he would bring the subject up in respect to my aunt's not getting any interest on the notes. In fact he was quite bitter about the matter and pointed out that she had received no interest since my mother died and he didn't think that was any way to treat an obligation. He seemed really to feel very strongly on the subject.

In those discussions Mr. Jenks also mentioned that Mrs. Jenks' interest in the Michigan Avenue property might be jeopardized if my father found it necessary to encumber his interest in any way. My uncle reminded me that my father had made a mortgage on the Hartford Building in 1921 for his personal use in the amount of \$70,000 and with an

(Testimony of Hyde Gillette.)

extravagant wife—and he said he didn't know whether the new wife would be extravagant or not—he might do it again. My uncle stated that he didn't have too much confidence in the way my father handled his business affairs.

In the later discussions I had with Mr. Jenks, in which my brother-in-law joined, Mr. Jenks pointed out that in connection with the possibility of my father's encumbering the Michigan Avenue property it might be ruinous for the two families because it represented their only remaining source of income, and if the Lehmann's who were the lessees elected to exercise their option it might not be possible to give them [33] the clear title which we had mortgaged the property to do. He made quite a point of that with me.

These discussions occurred week-ends at Lake Beulah and the first one or two at Mr. Jenks' apartment in Chicago, starting shortly after I received the letter from my father on May 8, 1938 and lasting pretty much through the summer.

I was very unhappy at the attitude Mr. Jenks took because while I had heard that there was some indebtedness that my father owed my aunt I had no idea that he felt so strongly about it. I did feel as the oldest in the family that if there was anything I could do to keep a rift from developing in the family I would like to do it. I didn't know exactly what I could do but I resolved to try to do something to obviate the possibility of Mr. Jenks saying to my father just how strongly he did feel about this note

(Testimony of Hyde Gillette.)

and creating a very serious breach between the two families. There had been some rather acrimonious exchanges of letters between the families from time to time in the past, and I knew that my father would become excited and extremely headstrong if my uncle told him what he had told me. I consulted with Wilson & McIlvaine, attorneys, on how to handle the matter. I talked to some of the men, including my brother-in-law, Howard Will, telling them the situation. Out of those discussions it was felt that perhaps the indebtedness my father owed to his sister might be secured by his interest in the Hartford Building. That idea was attractive to me because he had not gotten [34] anything from the Hartford Building up to that time with the exception of that January payment I mentioned earlier and it didn't seem to me that he would be sacrificing anything of any value to get this note off his back and permit a continuation of family harmony. Further discussions resulted in the decision that since I was handling the Hartford Building I might as well be appointed as trustee and his interest in the Hartford Building transferred in trust to me. I realized, however, that Mr. Jenks was adamant on Mrs. Jenks receiving some interest and since the earnings of the Hartford Building were uncertain after mortgage interest, repairs, and taxes, I felt that I should see to it that she was absolutely guaranteed at least \$1,000 a year out of approximately \$2,000 interest which was due her. Therefore, I proposed that that part of my father's \$6,000 income from the Michigan

(Testimony of Hyde Gillette.)

Avenue property supply an assured \$1,000 to Mrs. Jenks and provisions to effect that arrangement be included in the Hartford trust. I felt that it was expedient to have the Michigan Avenue property transferred to me in trust to assure these payments.

The Michigan Avenue trust was also created to serve another purpose. We felt that it was extremely important that the family be able to deliver title without delay under its bond to the lessees of the Michigan Avenue property, and Mr. Jenks raised the point that if my father's marriage were not successful it was possible that an uncooperative wife might hamper the transfer under the option agreement of the Michigan [35] Avenue property and that it might then go into default. That was the sole source of income of both families and Mr. Jenks took a very adamant view of that particular phase of the Michigan Avenue property matter. There was a third reason that the Michigan Avenue trust was set up and that was to make it more difficult for my father to encumber the property in which my aunt also had an undivided one-half interest. It was a revocable, not an irrevocable trust and if my father wanted to he could revoke the trust and do as he wanted with his one-half interest. I explained it to him feeling that he should thoroughly understand the arrangement but hoping that he would not exercise his right to revoke the trust.

I sought the advice of Wilson & McIlvaine in having these instruments prepared and they prepared the trust. I believe that Mr. Will in their

(Testimony of Hyde Gillette.)

office worked on them primarily. I think the attorneys first mentioned a prenuptial agreement but I don't recall just when. My brother-in-law Mr. Will prepared the trust instruments both for the Hartford Building and Michigan Avenue property.

The first time I saw my father after receipt of the letter of May 8, 1938, Petitioner's Exhibit 20, was when he arrived from the West on about the first of August, 1938. Prior to that time I had not advised him of any plans to make transfers of the property. I felt that since the reason in my mind was to satisfy the Jenks I didn't want to engage in correspondence on the subject and felt that I should wait until he [36] arrived to handle it orally. I didn't want to create any friction between him and the Jenks. Prior to the time I saw my father in the early part of August 1938, Mr. Will and I explained in general terms to Mr. and Mrs. Jenks what we contemplated doing to satisfy them and they appeared agreeable to the plan.

I believe I originated the plan to transfer the Lake Beulah home. There were two reasons for this. One, when Mr. and Mrs. Jenks first talked to me in May 1938 they indicated some complications in having a new head of the family brought up to Lake Beulah. Also in June when Miss O'Neil came East she mentioned that she understood the family had always regarded Lake Beulah as a Gillette institution and she didn't want to come up and be a fifth wheel as far as the management of the house was concerned. I suggested that under the circum-

(Testimony of Hyde Gillette.)

stances in order to preserve what had been in the family since 1893 as a Gileltte institution and relieve my father of the expense of his share of it that he might consider making a gift of his half to his children to enjoy during his lifetime. The members of the Jenks and Gillette family gathered at Lake Beulah every summer. The Jenks family were always there and the Gillette family were there every summer that I can remember until my mother died. Then my father came East and went up there almost every summer until 1938, and some of the children who were married went up there from time to time in the summer, most of them quite frequently, and brought their families. [37]

When I saw Miss O'Neil in June 1938 I told her that there was some problem created by the Jenks' attitude for financial reasons. I explained to Miss O'Neil that their attitude wasn't through any lack of regard for my father but rather that there was this indebtedness which Mr. Jenks felt something should be done about. I said that Mr. Will and I were working on a plan which we though might take care of the matter and not jeopardize my father's interest. I think I mentioned in very general terms what the plan involved but I don't recall how specific I was on the subject. The plan had not been completely formulated at that time. It was still in the stage of thinking about ways and means that could be figured out to satisfy the Jenks and to keep everybody happy.

It wasn't until we had further talks with the

(Testimony of Hyde Gillette.)

Jenks at Lake Beulah on week-ends that Mr. Will and I arrived at a definite plan. The plan was entirely completed before my father came East in August 1938 but no documents had been drawn because I wanted to discuss it with him and see what he thought of it. I did discuss it with him about August 1, the day he arrived, when he had luncheon with me at the University Club. I told him in general terms of my uncle's attitude toward getting some payment on the notes, and I pointed out that I thought he had some grounds for feeling as he did. Then I suggested the various arrangements to which I have already testified.

I did not tell him completely how strongly the Jenks [38] felt about his marriage because I didn't want to make him angry. For example, I remember distinctly that I decided not to tell him of the statement Mr. Jenks made that he would see that my father was sued for collection of the notes before he incurred further obligations in his marriage. I did not feel that I should tell my father of that statement and as far as I know he never knew of it.

My father's reaction to the plan was that if Howard and I thought it was all right and it met the problems that had arisen for us to go ahead and draw up the instruments. We did not discuss it with him much after the instruments were prepared. He left the matter entirely in our hands. I do not recall having any special or extended conference going over the documents with him except

(Testimony of Hyde Gillette.)

that I did try to make and felt duty bound to make it perfectly clear to him exactly what they meant and what they covered. I discussed the general form of these instruments with Mr. Will on week-ends at Lake Beulah and in general what instruments should be prepared. I listened to what he had to say on the subject but I did not discuss the detailed language of the instruments with him at any time. I left that in his hands as my attorney.

I originated the idea that the trust of the Michigan Avenue property should pay the amount of \$1,500 to Mrs. Gillette if she married my father and should survive him. In thinking of the matter during the summer I realized that I would have to make the arrangements I was trying to make [39] acceptable to him, and I knew that he couldn't feel happy in his marriage if he had not made some provision for his contemplated wife and that was the reason that I suggested the figure to him and suggested that arrangement.

Howard Will told me that his reason for suggesting a prenuptial agreement was that it was necessary for general legal reasons to make the other arrangements stick, but I didn't go into detail on the subject and the idea had not occurred to me. I was present when the prenuptial agreement was signed. It was signed in my office. Mr. Will, my father and Miss O'Neil also were present.

At the time I discussed these transfers with my father in the early part of August 1938 there was no discussion of the subject of his will.

(Testimony of Hyde Gillette.)

After he arrived at Lake Beulah in August of 1938 I went up each week-end until he left about September 20th and saw him on all of those week-ends with the exception of two when he was away visiting in Kenilworth in September. On those visits I do not recall any specific discussion that I had with my father on the subject of these transfers but we may have had casual conversations. I was not present on any occasion during which these transfers were discussed between Mr. and Mrs. Jenks and my father. It was my purpose in planning the transfers to keep the two families apart and as far as I know I did keep them from discussing the matter, at least in my presence. [40]

Cross-Examination

By Mr. Hart:

I did not take a general business course at Princeton. I graduated with a degree of A.B. I spent two years in Harvard Business College which is the regular course for a Master of Business Administration degree. Harvard is reputed to be one of the outstanding business schools in the country. In my courses at Harvard I did not study, consider or discuss estate tax or inheritance tax laws.

My father was born October 19, 1863. I first learned of his intended marriage to Miss O'Neil in May of 1938. I do not recall getting the reaction of my brother Edwin or my sister Helen toward that marriage. I do not recall that they ever expressed any opposition to it.

(Testimony of Hyde Gillette.)

In 1938 my uncle Mr. Jenks was approximately 60 years old. The Jenks lived in Chicago in their apartment in the early part of the winter and went up to Lake Beulah in the summer time. They lived very quietly and very simply. They liked to travel and in their earlier life they did travel in Europe and South America and in their later life confined their travel mostly to this country. Mr. Jenks at this time was not regularly employed.

When Mr. and Mrs. Jenks heard in the spring of 1938 of the impending marriage they did not favor it. They were opposed to it because with my father's limited income they couldn't see how he could possibly afford the additional expense of marriage. Further, he had not honored the note which he had given his sister Mrs. Jenks for \$41,650. Also, if he [41] did get married it was probable that it would cost him more than it would to live singly. He apparently did not have enough money to honor his obligations living singly and if it did cost him more it might lead to an encumbrance of either the Hartford property or the Michigan Avenue property which might jeopardize his sister's interest in those properties. At that time the Michigan Avenue property constituted the sole source of income of Mr. Gillette and Mrs. Jenks.

The provisions of the Hartford Building and Michigan Avenue trusts were planned by me and my counsel, Mr. Will, and his associates at the law firm of Wilson & McIlvaine. I did not suggest the details because I knew no law. I knew what I

(Testimony of Hyde Gillette.)

wished to accomplish. I do not remember showing the trust instruments to Mrs. Jenks before they were signed. Mrs. Jenks would not have understood them and there was no occasion to show them to her except to tell her in a general way what they contained, which I did. They may and probably were shown to Mr. Jenks by Mr. Will.

The Hartford trust provided that the note and interest would be paid by me as trustee. The net income from the Hartford Building in 1938 was little more than sufficient to make the distributions which are shown in the statement submitted to the court as one of the exhibits. The only property producing any appreciable income was the Michigan Avenue property. One-half of that income went to my aunt and one-half to my father. Mr. Jenks made no suggestion of getting [42] interest paid on the note. All he said that if interest wasn't paid he didn't see how my father was justified in getting married. I took it upon myself to find a way. The method I found was acceptable to Mr. Jenks on behalf of his wife because it included a guarantee from the Michigan Avenue trust of at least \$1,000 of the approximate total of \$2,000 interest due on the note each year. The reason we made that provision was because I felt a strong obligation to give my aunt real assurance that she would get at least \$1,000 interest. We weren't sure that she would get even that from the Hartford Building at that time. I showed her and I showed my father that the Hart-

(Testimony of Hyde Gillette.)

ford Building was gradually improving and I thought that the earnings would also improve.

This \$1,000 guarantee from the Michigan Avenue trust meant that if no interest was paid on the note by the Hartford trust then under the provision in the Michigan Avenue trust it would pay \$1,000 to Mrs. Jenks, and if \$500 is paid by the Hartford trust the Michigan Avenue trust would pay just \$500. The Michigan Avenue trust was revocable. Mr. Jenks made no comment on that. If Mr. Gillette had desired he could stop that \$1,000 from going to Mrs. Jenks by revoking the trust. After these two trusts were made my father's only source of income was from the Michigan Avenue property. The attorneys made the provision for ultimate distribution of the property in the Hartford trust.

I explained the entire document in general to my father and gave it to him to read. I do not recall explaining the provision for distribution at termination to him specifically. I talked to him about these documents more in terms of the general principles involved, telling him that my one purpose was to permit him to continue a happy life in the way he wished and at the moment that involved making it possible for him to get married with the friendly feeling of all the family.

As trustee of the Hartford trust I have paid the interest on the note to Mrs. Jenks since 1938. It has not been necessary to call upon the Michigan Avenue trust income for any part of that interest. In 1939 I paid to Mrs. Jenks the exact amount of

(Testimony of Hyde Gillette.)

interest of 5% on \$41,650. Mrs. Jenks conveyed her interest in the Hartford Building to me as trustee in 1940. I think the indenture is dated December 14, 1940. The beneficiaries of that trust from the standpoint of income are her nieces and nephews. I do not recall the provisions in respect of the corpus of the trust.

In 1939 when the Michigan Avenue property was sold Mrs. Jenks shared in that. Her share of the balance was \$150,000. She requested me to invest this sum in securities for her benefit. She did not place the money in trust. She still owns the securities which I manage for her. An associate of mine in my office prepares Mrs. Jenks' federal tax returns for her. We started doing that sometime in the 1930s, I think. They are filed with the Collector of Internal Revenue at Chicago. [44]

Prior to 1938, in theory the expenses of the Lake Beulah property were borne by Mr. and Mrs. Jenks and my father equally but my father very seldom contributed his portion of the total expenses and the Jenks paid the larger portion of those expenses. My sister and I spent week-ends at that property and some of us went there for our summer vacations in some of the years after my mother's death. That house had about eight bedrooms and it was built to accommodate two families.

Mr. Taylor, in response to a query by the court: It may be stipulated that William S. Jenks died in November 1941.

HOWARD A. WILL

a witness for petitioner, testified as follows:

Mr. Taylor: Mr. Will is not an attorney of record in this case.

Direct Examination

By Mr. Taylor:

I am 49 years old and I am a lawyer. I live in Winnetka, Illinois. I have lived in and around Chicago since 1924 and have been engaged in the practice of law since 1924. I am now with the law firm of McDermott, Will & Emery. I have been with that firm since June of 1941. Prior to that time I was associated with the law firm of Wilson & McIlvaine for more than ten years. I am the son-in-law of Edwin F. Gillette and the husband of his daughter Marietta. [45]

I am familiar with Exhibits 1 and 2. I did most of the preparation of these documents when I was with the firm of Wilson & McIlvaine, with assistance from one of my seniors in that firm. I was first approached on the subject of preparing those trust instruments during July or August of 1938 by Mr. Hyde Gillette.

I talked with Mr. and Mrs. Jenks on several occasions on the subject of Mr. Gillette's contemplated marriage. I first discussed it with them in May of 1938 while visiting them in their apartment in Chicago. Mr. Jenks was opposed to the marriage. He said Mr. Gillette could not afford it. Mrs. Jenks

(Testimony of Howard A. Will.)

had less to say than he did, but expressed some concern along the same lines. I first met Mr. Gillette in September of 1936. I met Mr. and Mrs. Jenks on the same day. I was a guest at the home at Lake Beulah.

I was present at discussions by Mr. and Mrs. Jenks of Mr. Gillette's contemplated marriage three or four times at least before they went to Lake Beulah about the middle of June 1938. I was up at Lake Beulah each week-end during that summer and Mr. Jenks brought up the subject practically every week-end that I was there. He felt very strongly on the subject and his feeling seemed to get stronger the more he talked about it. He was almost shouting in some of those discussions. He said something had to be done about the obligations that Mr. Gillette had to Mrs. Jenks or he would stop the marriage or bring suit on the notes. [46]

This matter was discussed on numerous occasions between me and Hyde Gillette. He approached me first on the matter. Hyde pointed out the feeling that was developing between Mr. and Mrs. Jenks and his father. He expressed concern that it would lead to a family rift and asked me if something couldn't be done to try to keep harmony between the families. I don't recall who originated the idea of the trust. That happened ten years ago. I am inclined to think I may have suggested it first. I must have devoted six or eight days, exclusive of my conversations with Hyde Gillette and Mr. and Mrs. Jenks, to the preparation of the trust instruments.

(Testimony of Howard A. Will.)

Mr. Stuart J. Templeton, one of the senior men with my firm of Wilson & McIlvaine, worked with me in preparing the documents. He originated the idea of the antenuptial agreement. He stated that he had some doubt that the other transfers would stand up legally unless along with them there was a prenuptial agreement in which we recited that the transfers had been made, the approximate value of the property transferred and that retained by Mr. Gillette, and that this was made clear to Miss O'Neil and incorporated in an agreement in which there was substantial or valid consideration.

I discussed with Mr. Templeton the trust of the Michigan Avenue property more than I did the other trust because of a touchy situation there. That property was under option or contract of sale to the Lehmann family, and Mr. Gillette and Mrs. Jenks had given a bond that when that option [47] was exercised they would give good title free of dower rights. They had also given a mortgage on that property securing that bond. That concerned me as a lawyer and I gave that document more attention than the other one. The prenuptial agreement recited that that property had been put in a revocable trust. It showed that the consideration for the agreement was \$1,500 per year payments to Miss O'Neil, the intended Mrs. Gillette. It also had the provision that Miss O'Neil, when requested to do so, would join with Mr. Gillette in signing any deeds or mortgages pertaining to property which he owned or might thereafter acquire, and it had her

(Testimony of Howard A. Will.)

release dower rights as to that property and others.

I discussed these instruments many times with Hyde Gillette, even before I started preparing them. I discussed that with him as early as June of 1938, and from then right up to the time they were executed.

I regarded it expedient to put that property into trust. I felt that it should be in trust so that good title could be given to the Lehmanns in the event they exercised their option to purchase the property. I had not met Miss O'Neil at that time. I knew there was a difference in age between her and Mr. Gillette. As a lawyer, I knew that in such situations as that there is always danger of the marriage not working out and the two becoming estranged. As a lawyer I did not feel I should recommend any kind of a thing that would let Mr. Gillette be in a position where he might have to go to [48] Mrs. Gillette, if they were estranged, and ask her to join with him in conveying that property to the Lehmanns. That was pointed out to Hyde Gillette.

I first met Miss O'Neil on the day she signed the prenuptial agreement, September 19, 1938. That agreement had been prepared and given to Mr. Edwin Gillette two days prior thereto when he signed the trusts, and he was to take the agreement with him and discuss it with Miss O'Neil. She came in to Mr. Hyde Gillette's office on Monday, the 19th, along with Mr. Gillette.

I had discussed the trust instruments with the

(Testimony of Howard A. Will.)

deceased in a general way prior to September 17 when he came to my office to sign them. On that day I went over the instruments with him, high-spotted the important provisions, and we discussed them rather thoroughly at that time.

The bond option agreement and other documents in relation to the Michigan Avenue property to which I have referred are Petitioner's Exhibits 13, 14 and 15. I was familiar with those documents when I prepared the trust instruments, Exhibits 1 and 2.

At the time Miss O'Neil came to Mr. Gillette's office to sign the antenuptial agreement I suggested to her that she employ counsel to review the documents in her behalf. She did not so employ counsel. I remember distinctly her saying that she felt that she did not need counsel in that matter.

My discussions with Mr. Jenks included discussions [49] about the Michigan Avenue property. He was very familiar with the situation there. He had negotiated that transaction whereby the option had been given and he thought it had been a good business deal. He took pride in discussing it with me. The matter was discussed in relation to the remarriage from the standpoint of the complications that might arise in the consummation of the sale if the marriage did not prove successful. Mr. Jenks expressed anxiety on that point on several occasions and thought that title to the property should be out of Mr. Gillette's name before he married and in the name of some trustee so that these possible

(Testimony of Howard A. Will.)

complications would not arise. I remember discussing that with both of them on one occasion. Mr. Jenks talked pretty loudly and it was rather embarrassing up at the summer home talking those financial family matters around the house. Other people were hearing it. On one occasion Hyde and I got Mr. and Mrs. Jenks in a car and drove about 300 yards away from the cottage and talked those matters over with them at that time.

Mr. and Mrs. Jenks also on these occasions discussed the Lake Beulah property. Mr. Jenks' feeling was not as strong on that as it was on the business properties but he was concerned because Mr. Gillette did not always pay his one-half of the expenses, and with a new wife payment of those expenses was more doubtful. Mr. Jenks thought that perhaps the Gillettes would not be using it much and Mr. Gillette should be relieved of the burden of the upkeep of that property [50] and it should be transferred to the children who were using it. Mrs. Jenks was present and engaged in the discussions relative to the Lake Beulah property.

Cross-Examination

By Mr. Hart:

Both Mr. and Mrs. Jenks felt that Mr. Gillette could not afford to marry. After the various instruments were prepared they were explained to Mr. and Mrs. Jenks. With those documents they then felt that Mr. Gillette could afford to get married. The Lake Beulah expense had been taken off his

(Testimony of Howard A. Will.)

hands and provisions had been made for paying interest on the note. At that time Mr. Gillette's only substantial income was \$6,000 a year from the Michigan Avenue property. It was possible for this income to be cut down after the trusts had been created depending on the earnings of the Hartford Building. Mr. and Mrs. Jenks were satisfied with that situation.

The law firm of Wilson & McIlvaine is not one of the largest in Chicago in numbers of lawyers. It is a well-established firm. The firm handled Federal tax matters. I didn't do that work so much. Mr. Templeton and Mr. Damon would be familiar with such matters.

I first met Miss O'Neil at the time she signed the prenuptial agreement the 19th of September. My wife had met her prior to that time. I knew personally nothing about Miss O'Neil but Marietta had known her and thought well of her.

The plan of the two trusts was discussed quite thoroughly between Hyde Gillette and myself prior to the time [51] the decedent arrived in Chicago. I don't know whether Hyde Gillette knew of the tax consequences of the transfers but we probably discussed that in a general way.

Mr. Edwin Gillette never came to my office until the day the documents were signed. Hyde and I had discussed the plan in a general way and then when Mr. Gillette came to Chicago about the first of August Hyde discussed the plan with him. I did not sit in on any of those discussions. Thereafter I

(Testimony of Howard A. Will.)

started drawing the instruments. I can't tell you exactly, but I think it must have been pointed out to Mr. Gillette that the corpus of the Michigan Avenue trust would eventually go to his four children. I don't recall that I explained to Mr. Gillette that if the Michigan Avenue trust was not revoked it provided for complete disposition of the property and he would have to do no more respecting the disposition of that property. I don't believe we got into such detail. Mr. Gillette was not a business man. He wasn't a man whom you can discuss complicated business matters with very well.

It was my impression that he had great love for his children. I can't recall that he ever definitely expressed an interest to make provision for their welfare. We had no extended conversation on that subject which would lead me to be able to tell you that that was my impression. He never said that he wanted his property divided after his death among his children. I had no such discussions as that with him.

I did not prepare Mr. Gillette's last will. I never saw it before he died. I didn't even know that it had been prepared. [52]

Mr. Jenks was quite concerned about the title on the Michigan Avenue property. After the Michigan Avenue trust was drawn I discussed with Mr. Jenks the fact that Mr. Gillette could revoke that trust and draw the title back to himself. However, Mr. Jenks was satisfied with that trust along with the prenuptial agreement.

(Testimony of Howard A. Will.)

One of the effects of the prenuptial agreement was to cut out the dower interest of Mrs. Gillette provided the document was held to be legal. I discussed with Hyde Gillette the question of a wife's dower rights and explained to him that the minute his father and Miss O'Neil were married she would have an inchoate right of dower in the property and it would be necessary for her to join in any deeds if the property was sold. I have no definite recollection but I suspect that we also discussed the fact that her right would come into enjoyment at Mr. Gillette's death. One of the effects of the prenuptial agreement was that she relinquish that right. She also got a life annuity of \$1,500 if she survived Mr. Gillette.

Mr. and Mrs. Jenks did not insist on the trust provisions for distribution of the corpus. I don't believe that they knew the details to that extent. Their interest was in the Hartford Trust, the primary interest was to get the note secured, the Michigan Avenue Trust was to get title out of Mr. Gillette so the sale could be made if the Lehmanns exercised their option, or so Mr. Gillette could not get the property encumbered in some way which would hurt Mr. and Mrs. Jenks. [53] Mr. Gillette could encumber the Michigan Avenue property even after the trust by first revoking the trust.

I don't know how much Miss O'Neil studied the prenuptial agreement over the week-end. I gave that document to Mr. Gillette on a Saturday and suggested that it be taken out and discussed with

(Testimony of Howard A. Will.)

Harriette. When she came into Hyde Gillette's office to sign it we discussed it. I would not say that she treated it casually.

I drew the trust indenture for Mrs. Jenks in December 1940 in which she transferred her half interest in the Hartford Building to Hyde Gillette as trustee. She transferred only her half interest, not the note. Under that trust the income was to go to her nieces and nephews during their lifetimes and on their death to their issue. On termination of the trust, as I recall it, the corpus would go to the nieces and nephews or as they should appoint. I don't know exactly what the termination event was but I think it was 21 years after the death of the last person then in being.

Further Examination

By the Court:

Mr. Gillette's interest in the Lake Beulah property was estimated by the family to be worth about \$10,000.

I have sat at the counsel table and collaborated with petitioner's counsel in this matter. I am a partner of Mr. McDermott who is the original counsel in this case.

After 1938 the Lake Beulah property was used by Mr. and Mrs. Jenks every summer up to Mr. Jenks' death. One of [54] Mr. Gillette's daughters, Helen, was married there and used it some at that time. I think possibly Mr. Gillette came one other summer and spent a little time there. My wife

(Testimony of Howard A. Will.)

used it a lot and our children and Hyde Gillette and his family used it.

The Lehmanns exercised their option to purchase the Michigan Avenue property on March 1, 1939 and I closed the deal in April of 1939. In connection with that transaction no instrument of any kind was required of Mr. Gillette, Sr. The trustee gave the title. Mr. Gillette, Sr. realized that the Michigan Avenue trust was revocable and he revoked it in part at one time to get \$6,000 out of it. The trust on the Hartford Building was irrevocable. Mr. Gillette was never asked to give an irrevocable trust on the Michigan Avenue property.

No objection.

See Clerk's letter dated 9/8/49.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

Filed T.C.U.S. Sept. 21, 1949.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD,
PROCEEDINGS AND EVIDENCE TO BE
CONTAINED IN RECORD ON REVIEW

To the Clerk of The Tax Court of the United States:

You will please transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals:

1. All of the documents and records in the file of The Tax Court of the United States, in accordance with paragraph (1) of Rule 11 of the rules of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure.

2. The Narrative Statement of Evidence filed by petitioner in the above-entitled cause, in accordance with Rule 75 of the Federal Rules of Civil Procedure.

Said documents to be certified and transmitted as required by law and the Rules of the United States Court of Appeals for the Ninth Circuit.

/s/ JOHN S. PENNELL,
Attorney for Petitioner.

[Affidavit of Mailing Attached.]

Filed T. C. U. S. Sept. 21, 1949.

The Tax Court of the United States
Washington

Docket No. 15623

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 33, inclusive, constitute and are all of the original papers and proceedings on file in my office as the original and complete record in the proceeding before The Tax Court of the United States entitled: "Estate of Edwin F. Gillette, Harriette O'Neil Gillette, Executrix, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 15623, and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office, and a Narrative Statement of Evidence supplied by appellant and bearing "no objection" of respondent, the same having been submitted and designated by appellant to be included here along with the original transcript of evidence pursuant to advice contained in a letter dated September 8, 1949 from the Clerk of the U. S. Court of Appeals, Ninth Circuit, to appellant, according to appellant's representation to me.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of October, 1949.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, The Tax Court of
the United States.

[Endorsed]: No. 12379. United States Court of Appeals for the Ninth Circuit. Estate of Edwin F. Gillette, Harriette O'Neil Gillette, Executrix, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States. Filed October 14, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

Docket No. 12379

ESTATE OF EDWIN F. GILLETTE, HAR-
RIETTE O'NEIL GILLETTE, Executrix,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS
TO BE RELIED UPON

Harriette O'Neil Gillette, Executrix of the Estate of Edwin F. Gillette, petitioner herein, by her attorneys, E. H. McDermott, Wm. M. Emery, and J. S. Pennell, hereby states that she intends to rely upon the following points in this proceeding:

That the Tax Court of the United States erred:

1. In holding and deciding that transfers of his interest in property known as the Hartford Building in Chicago, Illinois, and the Lake Beulah property at Lake Beulah, Wisconsin, made by decedent on September 17, 1938, were made in contemplation of death.

2. In failing to hold and decide that said transfers of property made by decedent on September 17, 1938 were not made in contemplation of death but were motivated by other considerations associated with continued life.

3. In disregarding substantial and uncontroverted evidence that decedent did not contemplate death in 1938 and that the transfers of property made by him in that year were prompted solely by financial considerations and the desire to be married with the approval of his entire family and by other considerations associated with continued life and not death.

4. In holding and deciding that petitioner failed to overcome the presumption of correctness attaching to the Commissioner's determination.

5. In giving evidentiary weight to the original presumption of correctness attaching to the Commissioner's determination and in failing to hold and decide that said presumption disappeared upon the introduction of evidence tending to prove that the transfers were not in contemplation of death.

6. In that its decision is contrary to law, is clearly erroneous, and is not supported by substantial evidence.

7. In ordering and deciding that there is a deficiency in estate tax of \$37,933.11 and in failing to order and decide that there was an overpayment of estate tax of at least \$1,275.76.

/s/ JOHN S. PENNELL,
Attorney for Petitioner.

Affidavit of Service by mail attached.

[Endorsed]: Filed Oct. 17, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF ALL OF THE RECORD
MATERIAL TO THE CONSIDERATION
OF THE REVIEW.

Harriette O'Neill Gillette, Executrix of the Estate of Edwin F. Gillette, petitioner herein, by her attorneys, E. H. McDermott, Wm. M. Emery and J. S. Pennell, hereby states that the following documents and portions of the record are material to the consideration of the review:

1. Docket entries of the proceedings before the Tax Court.

2. Pleadings before the Tax Court.

(a) Petition, together with attached Exhibit A (notice and Statement of Deficiency).

(b) Petitioner's motion to amend petition, together with court's order entered thereon.

(c) Answer.

3. Stipulation of Facts, together with Exhibits 1 through 4, inclusive, referred to therein and attached thereto.

4. Petitioner's Exhibits 5 through 20, inclusive.

5. Respondent's Exhibit A.

6. Petitioner's Narrative Statement of Evidence.

7. Memorandum Findings of Fact and Opinion of the Tax Court.

8. Order of the Tax Court dated January 25, 1949 amending Memorandum Findings of Fact and Opinion of the Tax Court.

9. Order of the Tax Court dated February 10, 1949, correcting and modifying Memorandum Findings of Fact and Opinion of the Tax Court.

10. (a) Respondent's computation for entry of decision under Rule 50, together with petitioner's consent thereto.

(b) Decision of the Tax Court.

11. Petition for Review, together with Notice of Filing Petition for Review and Affidavit of Mailing of Notice of Filing Petition for Review and Petition for Review.

12. Any and all orders made by the Tax Court or by this Court with respect to the enlargement of

time for the preparation and transmission of the record on review.

13. Designation of Portions of Record, Proceedings and Evidence To Be Contained in Record on Review.

14. Statement of Points To Be Relied Upon filed with this Court, together with Affidavit of Mailing attached thereto.

15. This Designation of All of the Record Material to the Consideration of the Review.

16. Motion to Consider Portions of Record in Original Form.

/s/ JOHN S. PENNELL,
Attorney for Petitioner.

[Affidavit of Mailing Attached.]

[Endorsed]: Filed Oct. 17, 1949.

[Title of Court of Appeals and Cause.]

MOTION TO CONSIDER PORTIONS
OF RECORD IN ORIGINAL FORM

Harriette O'Neil Gillette, Executrix of the Estate of Edwin F. Gillette, petitioner herein, by her attorneys, E. H. McDermott, Wm. M. Emory and J. S. Pennell, respectfully moves that the following documents contained in the record on review in this Court and previously designated by petitioner as being material to the consideration of the review, be not reproduced in the printed record on review, but that they be considered by the Court in their

original form and that permission be granted to the parties hereto to refer in briefs and arguments to said documents and the contents thereof:

1. Respondent's Exhibit A.

2. Petitioner's Exhibits 1 through 15 inclusive.

In support whereof petitioner respectfully shows as follows:

The above listed exhibits, although material to the consideration of the review, contain much extraneous matter not here material. The essential portions of said exhibits were discussed at the hearing before The Tax Court of the United States which discussion appears in the Narrative Statement of Evidence, designated for printing. Said exhibits are voluminous and in some respects difficult and expensive to reproduce. It is believed that the reproduction thereof in the printed record would serve no useful purpose but would unduly burden the record, and unreasonably increase the cost of printing the record.

Wherefore, petitioner prays that this motion be granted.

/s/ JOHN S. PENNELL,

Attorney for Petitioner.

So Ordered:

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

/s/ WARREN A. POPE,

United States Circuit Judges.

Affidavit of service by mail attached.

[Endorsed]: Filed Oct. 19, 1949.